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NO _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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JONATHAN B. AINSWORTH

Petitioner

V.

THE STATE BAR OF CALIFORNIA

Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

## JURISDICTIONAL STATEMENT

JONATHAN AINSWORTH
2237 S. Acadian Thruway
Suite 301
Baton Rouge, LA 70808
Telephone: (504) 923-0311

Petitioner
In Propria Persona

64 pp

## QUESTIONS PRESENTED

Attorneys throughout California are being deprived of their livelihood without their Constitutional rights. Decisions of the California Supreme Court conflict with decisions of the United States Supreme Court in this regard.

Are attorneys in California entitled to their Constitutional rights in proceedings brought against them by the California State Bar? When this question was presented in another jurisdiction, the United States Supreme Court said "yes". In Re Ruffalo 390 U.S. 544, 885 S Ct. 1222. The California Supreme Court and the California State Bar say "no", constantly and consistently ignoring United States Supreme Court precedents.

The Supreme Court has in the past considered matters involving individuals' rights to practice law when serious violations of constitutional safeguards have occurred. The current climate in California presents just such an occurrence. Traditional notions of due process are summarily dismissed by tribunals. Judges contend that attorneys are not entitled to due process and say so unabashedly.

The current climate in California presents a "McCarthy like" guilt by accusation climate.

Charges that have been withdrawn are allowed to proceed anyway even after notice has been given that they were withdrawn. An accused's right to counsel is denied. New charges are added after evidence has been taken in

clear disregard to In Re Ruffalo, above. The right to cross examine and to confront witnesses is summarily denied complaining witneses often do not appear, yet their testimony is inferred by surmissal. Statutes of Limitations are ignored. Evidence is taken at trial then matters severed, violating double jeopardy prohibitions. In the present case petitioner was denied a continuance for much needed surgery and despite the fact that he was in extreme pain, denying him a fair trial.

Constitutional rights are dismissed in California as procedural niceties that attorneys are not entitled to.

The issues presented by this case have enormous applicability to the rights of attorneys throughout California. Are attorneys entitled to their contitutional rights in State Bar

proceedings? The California Supreme Court and the State Bar of California have actually said "no", yet the United States Supreme Court has said that attorneys are entitled to their constitutional rights in such proceedings, In Re Ruffalo, above.

This case focuses in on the conflict presented by the highest court in California which consistently and repeatedly, in 1988 alone, ignored U.S. Supreme Court decisions in at least three cases. The California Court will continue to do so unless this Court takes action.

This jurisdictional statement will show that petitioner was forced to undergo a procedure that more closely resembles the Spanish Inquistion than it resembles the procedures envisioned by our Founding Fathers.

## PARTIES TO THE PROCEEDING BELOW

The State Bar of California brought the charges against Petitioner, Jonathan Ainsworth, ostensibly on behalf of four complaining witnesses, who had in fact withdrawn their complaints, ostensibly on behalf of two complaining witnesses who in fact refused to testify against Petitioner; and on account of one disgruntled attorney who succeeded petitioner in representation of a case, and who was even allowed to testify on behalf of his client.

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PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA
JURISDICTIONAL STATEMENT

Petitioner, Jonathan Ainsworth, prays that the Supreme Court grant a writ of Certiorari to review the judgment of the California Supreme Court below which was filed on October 27, 1988.

## OPINIONS BELOW

The opinion of the California Supreme Court which was filed on October 27, 1988 and ordered petitioner to be disbarred, is attached in the appendix as are The Notice of Appeal and The Petition for Rehearing which contains the points raised in these papers (Denied)

## JURISDICTION

The jurisdiction of this Court is invoked under Section 1257(3) of Title 28 of the United States Code.

The following cases sustain jurisdiction; Chaney v. State Bar of California (1967) 386F 2d 962, 390 US 1011, 88 S Ct. 1262, 391 U.S. 929, 88 S Ct. 1803 and In Re Ruffalo 390 U.S. 544, 885 S Ct. 122.

## CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The United States Constitution as amended by the Bill of Rights provides:

Fourteenth Amendment,Section 1

> "All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property without due process of law; nor deny any person within its jurisdiction the equal protection of the laws." (Emphasis added)

In the present case as well as in Natali v. State Bar 45 Cal 3d 456 and in Kelly v. State Bar 45 Cal 3d 649, the California State Supreme Court refused to consider the U.S. Supreme Court decision in In Re Ruffalo 390 U.S. 544, 855, S Ct. 122, which stated that attorneys are entitled to due process in State Bar proceedings.

Sixth Amendment

"In all criminal prosecutions the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense." (Emphasis added)

Against his strenuous objection, petitioner was not allowed to confront and cross examine witnesses against him or to be represented by an attorney, nor was he properly informed of the nature and cause of many of the accusations against him.

Fifth Amendment

"No person shall be held to answer for a capital or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be

compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

## STATEMENT OF THE CASE

1. Facts

A. The Haschemi Matter

Petitioner began representing Hassan Haschemi, an Iranian national in 1979. In 1980 at Haschemi's insistence, certain properties in Iran which he told petitioner were "owned" by Haschemi's companies but "controlled" by the Government of Iran were transferred to American corporations owned by Petru International Corporation, a California Corporation owned 100% by Jonathan Ainsworth, petitioner herein. Hassan Haschemi had told petitioner that the properties were owned by his companies prior to the transfer to petitioner's

corporations and that there had been no official expropriation of the properties by the Government of Iran, although a managing director had been appointed to run Haschemi's Iranian Companies in his absence. Haschemi was residing in Los Angeles County at the time, shortly following the Revolution in Iran.

In 1981, a year and one half later, Hassan Haschemi let it be known that he wished for himself and his Iranian companies to be represented by another attorney in a lawsuit against Rockwell International Corporation and Rockwell International Systems, Inc. Petitioner signed a substitution of attorneys in which Hassan Haschemi and his new attorney idicated that the new attorney would represent Haschemi and his Iranian companies only, not Jonathan Ainsworth's American Corporations. The State Bar

confused Ainsworth's American Corporations with Haschemi's Iranian Companies and charged attorney Ainsworth with, incredulously, attempting to continue to represent his own American corporations which, of course he did; however, it was not improper since Jonathan Ainsworth continued to own his American Corporations including Petru International Corporatrion. A stock certificate was shown which proved this. (Exhibit 20c)

The State Bar never understood the facts of ownership. (See Transcript Vol. II Page 7 lines 6-25, page 8 lines 1-16) It charged Jonathan Ainsworth with "altering" the substitution of attorneys because he had added the clarifying statement that he would continue to represent Petru, a corporation which he,

Ainsworth, owned, as well as Petru's subsidiary American Corporations. The complaining witness, Stephen Miller, even admitted that the substitution signed by Haschemi which he sent Ainsworth "...did not include Petru" (Transcript Vol. III page 91 lines 14-17 See also Exhibit 7 and 13).

As pled the charges were meaningless. The State Bar alleged that Ainsworth was improperly representing his own corporations in 1979, and the corporations were not even created until 1980. (See Exhibit KKK as well as Transcript Vol. II page 137 lines 15-20, Vol. VI, page 68 lines 18-25, page 69 lines 1-11). The charges were never amended. The were objected to at the hearing, yet the State Bar and the Hearing Referee ignored the complete incongruity between the charges and the

findings, completely ignoring the differences between the Iranian companies and the American Corporations.

The procedure of adding findings that were not pled by the presecution in a disbarment proceeding is condemned by the United States Supreme Court in In Re Ruffalo 390 U.S. 544, 885 S.Ct. 122, yet ignored by the California Supreme Court in this case, though it was objected to at all stages of the proceedings beginning at the hearing. (See discussion of In Re Ruffalo, below)

Additionally the State Bar contended that petitioner demanded payment of fees on other legal metters as a condition precedent to allowing copying of Hassan Haschemi's files by his new attorney, yet the attorney's young associate admitted in writing that he had copies of the pleadings and the depositions,

(See Exhibit 14, page 10 lines 12-13), the new attorney testified that he knew of no conversations where payment of legal fees was made a condition precedent (Transcript Vol. II, page 84 lines 19-25, page 85 lines 1-9, page 102 lines 5-7) and nowhere in the mailgram in which petitioner requested his fees be paid (sent while out of town on a 10 week trial) was there ever any mention of a condition precedent regarding payment of legal fees.

Petitioner made another copy of Haschemi's court files as requested by the court in the case against Rockwell, then deposited them in the Court, following petitioner moving his law office and residence from Southern California to Northern California. Mysteriously, petitioner was held in contempt for turning over the papers

late, though a stay in the proceedings had been ordered and through petitioner had never been served with the OSC re contempt, and petitioner had no knowledge that the hearing would be a re contempt hearing and a prior O.S.C. re contempt was vacated (Exhibit 34). Indeed the previous order states on its face that it was not served on petitioner!

Haschemi's new attorney proceeded to lose Haschemi's case. He even blamed the U.S. District Court judge by saying "Judge Takasugi who is generally a very patient judge, lost his patience in this case and, quite frankly wanted to get rid of the case" (Transcript Vol. II page 67 lines 17-19) in an attempt to excuse how he, the compalining witness, lost the motion for summary judgment. The Ninth Circuit Court of Appeals

upheld Judge Takasugi's judgment.

These procedural matters were raised at the State Bar hearing, in motions, and before the California State Supreme Court. The Petition for Rehearing in the California Court in the appendix discusses the objections in greater detail at pages 17-53, 124-129.

B. The Ghasemloo Matter

This involves petitioner hiring a paralegal. As charged, the State Bar alleged that hiring Ghasemloo and agreeing to pay him 1/2 of the proceeds of the Tchacosh, Inc. case allegedly violated the prohibition against an attorney splitting a legal fee with a non lawyer. As pled, the charges deal with a corporation that didn't even exist until 1980, yet the State Bar alleged the contract was entered into in

1979. Paying a percentage of proceeds for a corporation owned by petitioner could hardly be termed splitting a legal fee.

The State Bar never amended these charges which do not conform to the findings and cannot be used by the State Bar to disbar petitioner pursuant to the holding in In Re Ruffalo, (See Discussion below). The attached Petition for Rehearing in the California Court discusses the objections in greater detail at pages 54-57, 129-132.

C. The Wetherford Matter

Petitioner filed a class action on behalf of several plaintiffs alleging that the widespread practice of California counties charging parents for room and board while their children were

incarcerated in juvenile halls was unconstitutional. Petitioner alleged equal protection and due process violations, as well as a California State Supreme Court case which in 1982 had outlawed the practice and had declared it unconstitutional. Unknown to petitioner, the court later granted a rehearing, then later upheld its first opinion in 1984.

Between the time that the petition for rehearing was granted and before the original opinion was upheld, petitioner made a mistake of law in his pleadings regarding the then current status of the case. Petitioner had become inudated with responses from counties throughout the State of California and admittedly made a mistake in citing the law (See Transcript Vol. VIII page 83 lines 8-25 to page 84 lines 1-8).

No one was misled by the mistake. The court wasn't misled, the attorneys weren't misled. The counties weren't misled, yet the State Bar hearing referee chose to characterize this as deliberately making a false statement of law to a court with intent to deceive. As perposterous as that seems, the State Bar referee actually concluded that.

In this charge there are volumes of reported cases in California where courts have granted attorneys permission to amend pleadings and correct mistakes of law which occurred due to mistake, inadvertence surprise and excusable neglect.

The points raised in this petition are mentioned in greater detail in the Petition for Rehearing in the California Supreme Court. Lack of space prevents more detailed discussion in this

petition. (See Appendix pages 57-72, 132-135).

D. The Archuletta Matter

Petitioner represented Jacob Archuletta, who was injured when his mother slammed a safe door on his hand, breaking his little finger. Jacob was a minor and courts in California approve compromises of minor's claims.

Petitioner was charged with making a material omission by failing to advise the court that he had been given an advance by the mother. This was not inappropriate because it was paid out of the mother's funds, not her son's funds. (Exhibit 59) The State Bar referee refused to acknowledge this.

All of these issues were raised in the Petition for Rehearing in the California Court which is in the

Appendix at Pages 72-77.

E. Alleged practicing law while suspended for late payment of dues.

Petitioner represented himself in a federal court case during a period of time prior to when he had sent in his State Bar dues. The State Bar accused him of practicing law without a license; however, anyone may represent himself in court, and temporary suspension from practice does not automatically follow in federal court. Green v. Elbert 63 Fed Rptr 308.

F. Allegedly Tendering Checks With Insufficient Funds.

Implausable as it may seem, the State Bar even accused Jonathan

Ainsworth of deliberately defrauding the State Bar, a client and even the federal court where he practiced because personal checks to the above were returned N.S.F., but later paid. The doctrine of mistake appears alien to the State Bar referee, who actually stated he did not believe in due process for attorneys.

G. The Karen Mayes Ulricksen Matter

Petitioner represented James Mayes and his wife Karen Mayes. James Mayes died an untimely death due to an overdose of valium (Transcript Vol. III, page 154 et seq.) and his wife later admitted administering the overdoses to him. The State Bar argued that petitioner maintain inviolate the knowledge of the crime. Centuries of cases held otherwise, including the

United States Supreme Court cases Alexander v. U.S. 138 U.S. 353, 11 S. Ct. 350, Clark v. U.S. 289 U.S. 1 53 S. Ct. 465. Specifics of these allegations have been discussed at length in all stages of the proceedings including Mrs. Mayes probating a forged will (Transcript Vol. III, page 153). Lack of space prevents further discussion at this juncture, but see appendix at pages 80-92, 137-158 of the Petition for Rehearing for further discussion.

H. The Phyillaier Matter

In February 1982, petitioner represented Michael Phyillaier in a case against Phyillaier's business partner, Mandella, concerning the right of the parties to a Union Oil service station business and partnership assets.

Phyillaier gave petitioner an old boat. (Bill of Sale, Exhibit L.) This was later included in petitioner's written retainer agreement. (Exhibit H.) The State Bar charged Ainsworth with converting the boat.

The hearing referee found that there was no conversion of the boat (See Transcript Vol. IX, page 120, lines 22-24). Even the State Bar now concedes that "he (petitioner) prevailed on the issue of whether or not Mr. Phyillaier consented to the transfer of the boat (1986 cause Count Two)." See Examiner's Opposition to Hearing De Novo, p. 6, lines 3-4 (first parenthesis added); however, during the hearing the hearing examiner attempted to add a new charge, that of alleged failure to advise Phyillaier that he could consult another attorney before transferring the boat to

Ainsworth. The hearing examiner even admitted "The issue didn't arise until Mr. Ainsworth offered that (a valid bill of sale) as his defense (See Transcript Vol. V, page 149 lines 20-21).

Before signing these documents, Phyillaier mentioned that he had consulted another attorney. See Transcript Vol. V, page 143 lines 13-15 Vol. VI, page 57 lines 1-4)) Because of this petitioner did not additionally inform Phyillaier that he could consult another attorney, (See Transcript Vol. V, page 86 lines 6). Neither Phyillaier nor the State Bar challenged this. The remaining requirments for transferring the vehicle were met by the written retainer agreement which Phyillaier had signed (Exhibit H).

The Natali and Kelly 1988 California Supreme Court cases, below,

seem to allow the after the testimony amendment of charges procedure; however, the California State Supreme Court must yield to the U.S. Supreme Court by virtue of its decision in In Re Ruffalo, 390 U.S. 544, 885 S.Ct. 1222, which does not allow it (See Discussion below).

Additionally, in the words of Justice White in Ruffalo, petitioner should not be disbarred for this type of act because it is not "malum in se" i.e. alleged failure to advise (And he didn't violate the rule anyway, since Phyillaier said he had consulted another attorney and the retainer agreement described the reason for the transfer).

Ainsworth refunded to Phyillaier the sales price of the old boat in a spirit of good will, despite the fact that Ainsworth had performed the legal service that had been expressed in the

legal documents by which the boat was validly and properly transferred to him. (See Exhibit CC.)

All of this was raised throughout the proceedings. (See Petition for Rehearing in Appendix at pages 92-104, 158-168).

2. Argument

A. CLAIMS WHICH WERE WITHDRAWN BUT WHICH PROCEEDED ANYWAY, DENYING PETITIONER DUE PROCESS

The following witnesses withdrew their complaints, but The State Bar of California proceeded even after petitioner had received written notice from the witnesses that they had withdrawn their complaints. This denied petitioner his constitutional right to due process:

1. Rebecca Archuletta withdrew her

claim and refused to testify (Exhibits F,G)

2. Lyle Wetherford withdrew his complaint, but testified against Jonathan Ainsworth anyway. (Exhibit B,. Transcript Vol. I, pages 61-68)
3. Michael Phyillaier withdrew his complaint but testified against Jonathan Ainsworth anyway. (Exhibit CC, Transcript Vol. I, page 21 lines 12-20).
4. According to the hearing examiner, Karen Mayes signed a statement in which she agreed to dismiss the complaint (Exhibit FF).

Mr. Fishkin, the hearing examiner acquiesced to the above arrangements. He even counseled two of the complaining

witnesses to sign the statements which he knew were intended to resolve the claims. (Vol. 1, Page 61 lines 18 to page 68 line 10, pages 124-126 Vol. 1 page 253 lines 3-14).

This procedure does not conform to the due process notice standard which the United States Supreme Court stated in In Re Ruffalo, 390 U.S. 544 at 550, 88 S. ct. 1222 at 1226, since petitoner reasonably believed and had written notice that the claims were resolved and withdrawn. The State Bar argues that it has a rule which allows this. If so, the rule violates constitutional due process standards.

B. DENIAL OF RIGHT TO CONFRONT WITNESSES, IN VIOLATION OF THE SIXTH AMENDMENT

On two occasions petitioner demanded

the right to confront the witnesses against him, but it was denied by the referee.

Hassan Haschemi refused to testify against petitioner. His attorney testified for him! This seems so absurd that it needs little explanation other than to simply point out there is a Sixth Amendment Constitutional guarantee of the right to confront witnesses against an accused. Petitioner demanded this right, yet it was denied. (See Transcript vol. II, page 3 lines 22-25, page 4 lines 1-21, page 72 lines 17-19, page 74 line 4).

On another matter, Rebecca Archuletta also refused to testify against petitioner. This was pointed out to the hearing referee, yet he allowed the proceedings to continue without allowing petitioner to confront

this witness against him. Mrs. Archuletta had also signed a statement withdrawing her claim, (Exhibit G). The State Bar examiner interpreted this as Mrs. Archuletta being "totally uncooperative" and proceeded without her anyway (See Examiner's Opposition to Hearing De Novo).

In both of these instances, trial was conducted by surmissal. The State Bar surmised what the individuals would have said. Constitutional rights were trampled on.

C. THE FINDINGS DID NOT CONFORM TO THE CHARGES AND WERE NOT AMENDED, THOUGH NEW CHARGES WERE ADDED AFTER EVIDENCE WAS TAKEN, DENYING PETITIONER DUE PROCESS.

In regard to due process, the United States Supreme Court said in In Re Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, that it was improper to disbar an

attorney based upon an alleged offense which was added after the attorney and witnesses had testified. The California State Supreme Court has consistently ignored this decision! It must yield to what the U.S. Supreme Court said in In Re Ruffalo, cited above, despite its holdings in Natali v. State Bar 45 Cal 3d and Kelly v. State Bar 45 Cal 3d 649. The U.S. Supreme Court has said:

> "As Judge Edwards,dissenting below, said, 'Such procedural violation of due process would never pass muster in any normal civil or criminal litigation. (Cite to Rule 15(a) F.R.C.P.).
>
> "These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.[4]

"How the charge would have been met had it been originally included in those leveled against petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows. (In Re Ruffalo 370 F2d at 462).

In Footnote 4, The U.S. Supreme Court said: "The Ohio State Bar Association and Mahoney County Bar Association, amici curiae in support of the order of the Court of Appeals, argue that there was no due process violation because the State Board gave petitioner several months to respond to charge No. 13. This argument overlooks the fact that serious prejudice to petitioner may well have occurred because of the content of the original 12 specifications of misconduct. He may well have been lulled 'into a false sense of security' (Bouie v. City of Columbia, 378 U.S. 347, 352) that he could rebut charges Nos. 4 and 5 by proof that Orlando was his investigator rather than a solicitor of clients. In that posture he had 'no reason ever to suspect' (Ibid.) that in doing so he would be, by his own testimony, irrevocably

> assuring his disbarment under charges not yet made. This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive petitioner of procedural due process. Reversed" In Re Ruffalo, above (emphasis added). wrote Justices Douglas, with whom Justice Black joined the opinion. Justices Harlan White and Marshall concurred Justice Stuart took no part in the decision.

Simply put, the California Court in Kelly and in Natali and in the present case, Ainsworth, did not discuss and was apparently unaware of the decision by the United States Supreme Court in In Re Ruffalo above, despite the fact that petitioner had brought it to the Court's attention. Of course the U.S. Supreme Court's decision is controlling.

In the present case, the State Bar

of California sought to distinguish Ruffalo saying it did not apply; however, it did. In Ruffalo, the attorney defended the charges against him by proving that he hired an investigator. In the present case, Jonathan Ainsworth disproved the charges of alleged conversion of an old boat (Phyillaier) by showing a bill of sale for the boat. This bill of sale was then used by the State Bar to formulate a new charge against Jonathan Ainsworth, (See Transcript Vol. V, page 149 lines 20-21) after testimony had been given. He was charged with alleged failure to advise the client that he could consult another attorney before transferring the boat, when in fact Phyillaier did consult one. (See Transcript Vol. V, page 143, lines 13-15, Vol. III, page 57 lines 1-4). The California Court has

ignored what the U.S. Supreme Court said regarding attorneys' rights to due process!

The same thing was done in regard to the Haschemi and Ghasemloo matters. In Haschemi, the charges and findings confuse Haschemi's Iranian companies with petitioner's American corporations. (See Transcript Vol. II, page 7 lines 3-25 page 8 lines 1-16) Petitioner is unbelievably charged with malfeasance against his own corporations!

At the beginning of the proceedings, petitioner attempted to clear up the discrepency in the charges; (See Transcript Vol. II, page 7 lines 6-25, page 8 lines 1-16, Vol. VI, page 68 lines 18-25, page 69 lines 1-11) however, the State Bar never amended to state them correctly.

In Ghasemloo, the charges say that

petitioner hired Ghasemloo as a paralegal in regard to a lawsuit on behalf of a corporation which was owned by petitioner himself! As charged, it would not be wrong for petitioner to pay someone to assist him with regard to his own corporation; however,the findings improperly conclude attorney fee splitting with a nonlawyer. This was not properly alleged.

In both Haschemi and Ghasemloo the charges allege acts regarding corporations which were not even in existence at the times alleged! (See Transcript Vol. VII, page 68 lines 18-25, page 69 lines 1-11).

Petitioner had repeatedly objected to the entire proceedings (See Transcript Vol. I, pp.3 lines 16,6,8,23,104,105 lines 6; Vol. II, p. 10 lines 6-7, page 12 lines 24-25, page

13 (preserved for entire trial) Vol. II, p. 15 line 25, page 16 lines 1-12, page 18 lines 16-17, page 32 lines 17-18, pages 35, 36, 37, 38, 61,Vol. VII, page 81 lines 3-4) and did not waive his objections.

The procedures used by the State Bar also violates petitioner's constitutional right "to be informed of the nature and cause of the accusation" as specified in the Sixth Amendment.

D. PETITIONER WAS DENIED HIS RIGHT TO CROSS EXAMINE WITNESSES

The hearing referee actually cited as an "aggravating factor" that petitioner wished to cross-examine a witness (Phyillaier) concerning his mental capacity to testify, even though the witness had been previously discharged from employment at the

Alameda County Sheriff's Department for mental reasons. (Transcript Vol. I, pp. 181-184.) The referee even threatened to take petitioner to Superior Court in a contempt proceeding in retaliation for asking the questions. (Transcript Vol. I page 210 lines 14-19). The referee would not allow this fundamental right and it cast a shadow on the entire proceedings.

Phyillaier later testified "I have about 16 degrees in automotive engineering." Petitioner was not allowed to question this highly implausable statement which reflected on Phyillaier's credibility and mental competence (Transcript Vol. I, page 205, line 25 to page 206 lines 1-9).

Even the referee ruled against Phyillaier regarding his conversion allegations (Transcript Vol. IX, p.120,

lines 22-24), casting further doubts on Phyillaier's lack of credibility and lack of mental competence; however, although stated in open court, this finding was left out of the highly selective decision. The hearing examiner also conceded that Michael Phyillaier did not prove his allegation. (Examiner's Opposition to Hearing De Novo p.6, lines 3-4)

E. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE REFEREE WAS NOT IMPARTIAL.

The referee refused to allow petitioner to introduce evidence (Transcript Vol. IX, p. 10, lines 1-17) refused to listen to motions (Transcript Vol.I, page 12, lines 25 to page 13 lines 1-6), said that petitioner could not state an objection until <u>after</u> a witness answered a question (Transcript Vol. II, page 33 lines 1-7) and even cut

off the hearing before petitioner could finish his case. (Transcript Vol, IX, p.118, line 1)

The referee also showed that he erroneously believed that the State Bar Court had not issued an order granting petitioner an appointed counsel which it had. The referee, erroneously reported: "In respondent's case he failed to qualify for a State Bar appointed attorney because his financial condition did not show he could not afford his own attorney." Order on Application for Hearing DeNovo, April 2, 1987, page 3 lines 9-11, Emphasis added.), yet as the California Supreme Court correctly pointed out in its opinion: "The record indicates that petitioner's 1985 motion for appointed counsel was granted over the phone by the State Bar clerk's office in November

1985." For the referee to be in error about this fact throughout the entire hearing shows he handled Ainsworth's requests for counsel at the hearings with erroneous assumptions. Petitioner's lawyer was taken away from him without due process.

F. PETITIONER WAS DENIED DUE PROCESS BECAUSE THE REFEREE DID NOT PROPERLY CONSIDER THE MITIGATING FACTORS.

The following factors mitigate against discipline: (i) Between 1979 and 1984, petitioner repeatedly suffered from uncontrolled bleeding due to ulcerative colitis and was hospitalized for five days in 1979 having lost 40 lbs. of body weight. This was shortly before the Ghasemloo and Haschemi matters. (See Exhibit AAA, page 14

Transcript Vol. VII, page 94 lines 8-25, page 95, 96, 97, 99-101) The uncontrolled bleeding had caused him to lose 25 lbs. of body weight during the Mayes and Phyillaier matters. (See Exhibits III and JJJ, as well as Transcript Vol. V, pages 115-116). Petitioner continues to protest that the referee would not allow or even consider additional medical testimony as to the severe effect upon him of the prescribed medication. (See Application for Hearing De Novo, March 30, 1987 and Declaration of Leo Tuckman, M.D., which showed additional medical evidence that petitioner suffered debilitating effects from the medicine he took to control his illness); (ii) petitioner had for the last year and one half been assisted in his practice by a personal injury attorney in good standing; (iii) four

character witnesses testified at the hearing to petitioner's honesty, veracity, trustworthiness, and conscientiousness; (iv) petitioner had no prior record of discipline. These matters appear in the Petition for Rehearing in the California Court at pages 105-108 of the Appendix and were not given proper consideration by the heearing referee.

G. MANY OF THE CHARGES WERE BROUGHT WELL BEYOND THE TIME OF THE APPLICABLE STATUTE OF LIMITATIONS. THIS DENIED PETITIONER DUE PROCESS.

The referee ignored the laws that deal with statutes of limitations, which in California is two years for attorney malpractice.

The Haschemi and Ghasemloo

allegations were filed on February 26, 1985 and occurred "In or about October, 1979," "on December 20, 1979," as well as acts in 1981 (four to six years). These should have been stricken because they were barred by the Statute of Limitations. Petitioner objected, yet the charges remained. (See Transcript Vol. II, page 3 lines 11-25, page 4 lines 1-21).

The Michael Phyillaier allegations were filed against petitioner on January 17, 1986 and dealt with allegations that occurred in 1982, (four years previously). These allegations should likewise have been stricken. (Transcript Vol. I, page 200 line 25 to page 201 lines 1-4) Petitioner was denied due process.

H. PETITIONER WAS DENIED HIS RIGHT TO COUNSEL

Petitioner voluntarily accepted service by mail, of the first notice to show cause with the following condition: "This document is filed upon condition that counsel be appointed and constitutes a special appearance for that purpose."The State Bar Court accepted the condition and ordered that counsel be appointed; yet this was never done. There was no evidence that the State Bar ever attempted to comply with the Court order. The State Bar Court later reneged on the agreement and took the attorney away.

When the California Supreme Court later reviewed the order regarding appointed counsel which had been granted, the State Bar urged ex post facto that the California Court reconsider petitioner's gross income, not his net income. The falacy of this

approach, which the California Supreme Court followed, is obvious. Gross income did not include operating expenses, office expenses, medical bills, etc. It is the "bottom line" that is relevant, not what one grosses in his law practice. Even so, the form shows $1,500 take home pay which is $18,000 per year gross, not the $42,000 gross figure that the State Bar erroneously calculated and the California Court erroneously followed,

Petitioner again accepted service by mail on the second notice to show cause "upon condition that counsel be appointed and constitutes a special appearance for that purpose." None was appointed. Petitioner's statement of need was based on the identical financial data as his 1985 request for appointment of counsel, since his

financial position had not changed.

In moving to take away petitioner's attorney, the State Bar argued that petitioner was attempting to delay the proceedings when in fact it was the State Bar that delayed by failing to find petitioner his court ordered appointed attorney. In bringing the motion to take away pettioner's attorney, the hearing examiner willfully failed to serve petitioner's counsel, who had been ordered appointed. There is no proof of service on petitioner's attorney whatsoever. No hearing was held and an order was issued ex parte taking away petitioner's attorney even before the copy of the motion was received.

Petitioner constantly objected to proceeding without counsel, and to the arbitrary way proceedings were

conducted. (Transcript Vol. I, p.3,6,7,9,10,Vol. VI, page 4 lines and to the entire proceeding (Transcript Vol. I, page 23 lines 4-6, page 104 lines 18-25, page 105 lines 1-13). Petitioner raised these points with the California Supreme Court as the Petition for Rehearing and the Opinion in the Appendix clearly show.

The proceedings should have been stayed until the State Bar complied with the court order and found petitioner an appointed counsel. No subsequent papers were sent to the court appointed counsel and were therefore invalid, including the trial and the trial notice.

The order appointing counsel should be reinstated and the State Bar ordered to pay petitioner's attorneys fees and costs within twenty days of the filing of a cost bill by petitioner. (After

the hearing was over petitioner was able to finally locate counsel to help with the appeal).

I. THE DENIAL OF THE MOTION FOR A CONTINUANCE DENIED PETITIONER HIS DUE PROCESS RIGHTS.

Approximately two weeks before the disciplinary hearing was to begin, petitioner sent a mailgram to the State Bar requesting a sixty-day continuance to recover from surgery. Evidence of exploratory surgery for cancer, (see Exhibit AAA), was contained in numerous motions and at the hearing. All requests for continuances were sternly refused (Transcript Vol. I, page 3,5,6,8, Vol. III, page 10, 11, 57, Vol. VI, page 47, line 25, Vol. VI, page 61, 87).

Petitioner also suffered extreme pain at the hearing since he also needed additional hernia surgery, yet he was still not allowed a continuance (see Transcript Vol. I page 6 lines 11-25, Vol. IX, page 13, line 22 as well as medical records.) "I need a hernia operation. This had made it very difficult to carry my papers back and forth to this Court..." (See Transcript Vol. VI, page 58 lines 22-24) The referee even ridiculed petitioner's poor health by saying "I'm not feeling so well either" when petitioner implored him for a continuance (See Transcript Vol. I page 257 lines 22-25, page 258 lines 23-24, page 259 lines 1-11).

The referee actually bereated petitioner when he asked for time to review the documents which he hadn't seen in years (Transcript Vol. II, page

143 lines 16-21).

At one point, petitioner actually fell asleep at the hearing table due to physical exhaustion and, as he told the referee, he was averaging only two hours of sleep per night due to trial preparation and his physical disability. (See Transcript Vol. IV, page 171 lines 5-8) Petitioner even fell asleep at the wheel while driving to a hearing, his condition was so week.

The denial of the motions for a continuance denied petitioner due process. It was so severe it even amounted to torture (See Transcript Vol. IV, page 170 lines 1-11) Sentenced to undergo trial under the circumstances amounted to cruel and unusal punishment.

Fundamental fairness required a

continuance after surgery of this type and with petitioner half asleep, in need of additional surgery, and semi conscious. State Bar Court Rules of Practice, former rule F.3, now rule 1131(d) states that a continuance may be granted on a showing of good cause. One should have been granted. (See appendix at pages 113-117 for further discussion)

J. THE CLIENT SECURITY FUND MATTERS WERE IMPROPERLY SEVERED, DENYING PETITIONER DUE PROCESS AND VIOLATING HIS RIGHTS AGAINST DOUBLE JEOPARDY.

The referee ordered the Phyillaier and Mandella Client Security Fund matters relating to the ownership of the boat and the Phyillaier-Mandella business partnership off calendar without prejudice, violating the

constitutional prohibition against double jeopardy since evidence had already been taken and the Phyillaier complaint was ruled upon. Petitioner strenously objected. (Transcript Vol. V, pages 175, 176, Vol. III, pages 11, 112 lines 1-15) The hearing examiner had said that these matters were the same as the Phyillaier matter, (Transcript Vol. III, page 7 lines 21-25). The referee should have dismissed the Client Security Fund matters with prejudice since evidence had been received. See Appendix pages 117-119 for further discussion.

K. CONCLUSION

Petitioner requested a new hearing before three impartial referees, with an attorney present to represent him, and not immediately following exploratory

surgery for cancer. This was denied by the California Supreme Court (See Declaration of Jonathan Ainsworth filed with the California Supreme Court).

Disbarment is inappropriate in view of the repeated violations of petitioner's constitutional rights, as well as the contradictions between the findings and the charges, between the findings and the facts and between the findings and the law. The procedures followed by the State Bar in its hearing are reminiscent of midevil trials.

What the State Bar of California proved was that petitioner was very sick and suffered from extreme cases of ulcerative colitis and uncontrolled bleeding that caused him to be near death. At these points in his career, petitioner made tactical (not ethical) mistakes in the conduct of his practice,

the type of which that have ordinarily been corrected by California lawyers and California courts for over a century of California jurisprudence. (See Appendix at pages 132-135 of Petition for Rehearing). They were not the type of acts which Justice Byron White called "mallum in se" and were not the type to warrant disbarment; however, the hearing referee chose to characterize them as deliberate evil acts, even though there was no evidence of malice or intent. The referee was hardly impartial as his cruel treatment of petitoner's medical condition during the hearing clearly indicated.

The order of disbarment should be reversed and the State Bar of California ordered to pay Jonathan Ainsworth's attorney's fees and costs within 20 days of his filing a memorandum of attorney's

fees and costs, since his court ordered appointed attorney was taken away from him without due process of law. The findings and procedures that were followed cannot pass constitutional muster.

REASONS FOR GRANTING THE WRIT

A "reign of terror" currently exists in California with respect to attorneys' rights to practice law. Guilt by accusation is the norm, and attorneys are presumed guilty and must overcome this presumption by nebulous standards of proof that are not followed. Not only is the accused presumed guilty, he must overcome this presumption with proof "beyond a reasonable doubt", or else he is ostracized from his profession permanently. Prosecutors not only seek to deprive petitioner of his livelihood,

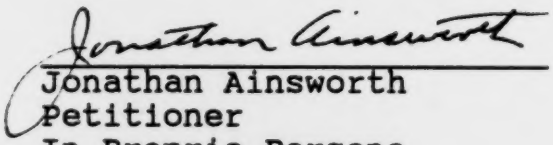
Prosecutors and tribunals are setting dangerous precedents in California with regard to due process rights as they apply to attorney defendants, ignoring constitutional safeguards and U.S. Supreme Court decisions in the process.

Petitioner requests that this Court grant the petition for a Writ of Certiorari and at the same time summarily reverse the judgment below and order that the State Bar of California pay all of petitioner's attorneys' fees and costs from the outset of the case to its conclusion since his court ordered attorney was taken away without due process.

Unless this court acts the State Bar of California will continue to trample on attorneys' constitutional rights. This case has universal applicability to attorneys throughout

California.

Respectfully submitted January 24th 1989.



Jonathan Ainsworth
Petitioner
In Propria Persona
2237 South Acadian Thruway
Suite 301
Baton Rouge
Louisiana 70808
(504)923-0311

88-1240

Supreme Court, U.S.
FILED
JAN 25 1989
JOSEPH F. SPANIOL, JR.
CLERK

NO _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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JONATHAN B. AINSWORTH

Petitioner

V.

THE STATE BAR OF CALIFORNIA

Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

## APPENDIX TO JURISDICTIONAL STATEMENT

JONATHAN AINSWORTH
2237 S. Acadian Thruway
Suite 301
Baton Rouge, LA 70808
Telephone: (504) 923-0311

Petitioner
In Propria Persona

235

NO _____

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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JONATHAN B. AINSWORTH

Petitioner

V.

THE STATE BAR OF CALIFORNIA

Respondent.

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# PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

## APPENDIX TO JURISDICTIONAL STATEMENT

JONATHAN AINSWORTH
2237 S. Acadian Thruway
Suite 301
Baton Rouge, LA 70808
Telephone: (504) 923-0311

Petitioner
In Propria Persona

SUPREME COURT OF CALIFORNIA

| | |
|---|---|
| JONATHAN B. AINSWORTH<br>Petitioner | ) |
| NO. 500-4517 | ) |
| VS | ) |
| THE STATE BAR OF CALIFORNIA<br>Respondent | ) |

NOTICE OF APPEAL TO THE SUPREME COURT OF THE UNITED STATES

AND

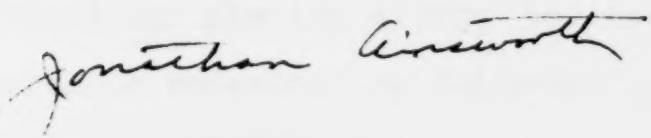
PETITION FOR WRIT OF CERTIORARI

NOTICE IS HEREBY GIVEN that Jonathan Ainsworth hereby appeals to the United States from the final judgment of the California Supreme Court entered on October 27, 1988.

The appeal is taken pursuant to Section 1257(2) of Title 28 of the United States Code.

In the alternative, a petition for Writ of Certiorari is made pursuant to Section 1257(3) of Title 28 of the United States Code.

Dated January 23, 1989.



Jonathan Ainsworth

2237 S. Acadian Thruway
Suite 301
Baton Rouge, Louisiana 70808
Telephone (504) 923-0311

Attorney for Petitioner
In Propria Persona

DECLARATION OF SERVICE BY MAIL
(Code Civ. Proc., 1013a, 2015.5)

Sara E. Choate hereby declares: that I am employed in Baton Rouge, Louisiana in the County of East Baton Rouge; that I am over the age of eighteen years and am not a party to the within above-entitled action; that my business address is 2900 West Fork Dr., Suite 200, Baton Rouge, Louisiana; on the 17th day of January, 1989, I served the within NOTICE OF APPEAL by placing a copy thereof in an envelope addressed as follows:

DIANE C. YU
TRUITT A. RICHEY, JR.
GAEL INFANDE - WEISS
555 Franklin Street
San Francisco, CA 94102

and by then sealing said envelope and depositing the same with postage thereon fully prepaid, in a United States Postal Service mailbox at Baton Rouge, Louisiana.

I declare under penalty of perjury that the forgoing is true and correct. Executed at Baton Rouge, Louisiana this 24th day of January, 1989.

(s) _____

Sara E. Choate

SUPREME COURT OF CALIFORNIA

| | |
|---|---|
| JONATHAN B. AINSWORTH<br>Petitioner | ) |
| NO. 500-4517 | ) |
| VS | ) |
| THE STATE BAR OF CALIFORNIA<br>Respondent | ) |

PETITON FOR REHEARING
AND TO BE RELIEVED FROM
FILING DEADLINE PURSANT TO CCP 473

JONATHAN AINSWORTH
2237 S. ACADIAN THRUWAY
SUITE 301
Baton Rouge, LA 70808
Telephone: (504) 923-0311

Attorney for Petitioner
In Propria Persona

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IN THE SUPREME COURT OF THE STATE OF CALIFORNIA

| | |
|---|---|
| Jonathan Ainsworth, | ) |
| Petitioner | ) |
| The State Bar of California, | ) |
| Respondent | ) |

PETITION FOR REHEARING

Because of glaring inconsistencies between the charges and the findings, between the facts and the findings and between the law and the findings, as well as outright hostility on the part of both the hearing examiner and the referee, petitioner requests the court reconsider its earlier ruling of disbarment and let the truth be known.

Petitioner's former attorneys advised him that they thought the filing

deadline for a motion for rehearing was 60 days. Petitioner requests relief from the filing deadline pursuant to Code of Civil Procedure Section 473 and files these papers in an attempt to conform the fifty page limit.

Respectfully submitted December 30, 1988 Jonathan Ainsworth

Jonathan Ainsworth

Petitioner

## INTRODUCTION

Petitioner complains of the violations of his rights as protected by the United States Constitution and the Bill of Rights.

1. Four complaining witnesses signed written statements that they were dismissing their claims, yet the State Bar proceeded anyway. This violated due process. In Re Ruffalo 390 v.s. 544, 885 S.Ct 1222.

2. Two complaining witnesses did not testify, through petitioner requested they do. This denied petitioner his constitutional right to confront witnesses as protected by Article 6 of the United States Constitution.

3. Petitioner was denied his right to cross examine.

4. On three occasions, the charges do not conform to the findings. On two

ocasions the State Bar made no motion to amend the charges and they must be stricken. On one occasion the motion to amend was improperly granted; however, no amendment was ever made. All of these violated petitioner's right to due process pursuant to In Re Ruffalo, above.

5. The findings are contradicted by the facts.

6. In addition, the hearing examiner and review panel failed to properly consider all the mitigating factors including petitioner's severe illness, as well as the debilitating effects of prescription drugs which he refused to consider at all (See mitigating factors, below).

7. Petitioner accepted service of process "upon condition that counsel be appointed." One was appointed then

taken away, without due process.

8. Petitioner was denied a continuance despite severe health problems.

III. DISCUSSION

A. CLAIMS WHICH WERE WITHDRAWN BUT WHICH PROCEEDED ANYWAY

The record is replete with instances where the complaining witnesses withdraw their complaints, but in which the State Bar proceeded anyway, after petitioner had received written notice from the witnesses that they had withdrawn their complaints. This denied petitioner his constitutional right to due process, as will be shown:

1. Rebecca Archuletta withdrew her claim and refused to testify (See Exhibits F,G)
2. Lyle Wetherford withdrew his complaint (See Exhibit B), but testified against Jonathan Ainsworth anyway.

3. Michael Phyillaier withdrew his complaint (See Exhibit CC), but testified against Jonathan Ainsworth anyway.

4. According to the hearing examiner, Karen Mayes signed a statements in which she agreed to dismiss the complaint (See Exhibit F4). Mr. Fishkin, the hearing examiner acquiesced to the above arrangements. He even counseled the complaining witnesses to sign the statements (See Transcript, Vol. 1, Page 125).

This procedure hardly conforms to the due process notice standard which the United States Supreme Court stated in In Re Ruffalo, 390 U.S. 544 at 550, 88 S. ct. 1222 at 1226.

This entire process violated petitioner's right to due process notice of the charges against him since he reasonably believed that the claims were resolved. The State Bar argues that it has a rule which allows this. If so, the rule violates due process standards.

B. DENIAL OF RIGHT TO CONFRONT WITNESSES

On two occasions petitioner demanded the right to confront the witnesses against him, but it was denied.

Forty percent of the findings against petitioner deal with Hassan Haschemi, yet Hassan Haschemi refused to testify! His attorney testified for him. This seems so absurd that it needs no explanation other than to simply point out there is a constitutional guarantee of the right to confront

witnesses against petitioner. Petitioner demanded this right, yet it was denied.

On another matter, Rebecca Archuletta also refused to testify against petitioner. This was pointed out to the hearing examiner, yet he allowed the proceedings to continue without allowing petitioner to confront the witnesses against him.

In both of these instances, trial was conducted by surmissal. The State Bar surmised what the individual would have said.

C. DENIAL OF RIGHT TO CROSS EXAMINE

Petitioner's right to cross examine witnesses was also denied him. The referee even cited "in aggravation" the fact that petitioner attempted to cross examine a complaining witness (Phyillaier) on grounds that he was not

mentally competent to testify. (See Transcript Vol. II pages 181-190).

D. THE FINDINGS DO NOT CONFORM TO THE CHARGES AND CANNOT BE AMENDED TO DISBAR PETITIONER.

In regard to due process, the United States Supreme Court said in the matter of Ruffalo, 390 U.S. 544, 88 S. Ct. 1222, that it was improper to disbar an attorney based upon an alleged offense which was added after the attorney and witness had testified. The California State Supreme Court must yield to what the U.S. Supreme Court said in Ruffalo, cited above, despite the holdings in Natali v. State Bar 45 Cal 3d and Kelly v. State Bar 45 Cal 3d 649.

> "As Judge Edwards, dissenting below, s a i d , 'S u c h procedural violation

of due process would never pass muster in any normal civil or criminal litigation.' (Cite to Rule 15(a) F.R.C.P.).

"These are adversary proceedings of a quasi-criminal nature. Cf. In re Gault, 387 U.S. 1, 33. The charge must be known before the proceedings commence. They become a trap when, after they are underway, the charges are amended on the basis of testimony of the accused. He can then be given no opportunity to expunge the earlier statements and start afresh.[4]

"How the charge would have been met had it been originally included in those leveled against petitioner by the Ohio Board of Commissioners on Grievances and Discipline no one knows. (In Re Ruffalo 370 F2d at 462).

In Footnote 4, The U.S. Supreme Court said: "The Ohio State Bar Association and Mahoney County Bar Association, amici curiae in support of the order of the Court of Appeals, argue that there was no due process violation because the State Board gave petitioner several months to respond to charge No. 13. This argument overlooks the fact that serious prejudice the petitioner may well have occurred because of the content of the original 12 specifications of misconduct. He may well have been lulled ' into a false sense of security' (Bouie v. City of Columbia, 378 U.S. 347, 352) that he could rebut charges Nos. 4 and 5 by proof that Orlando was his investigator rather than a solicitor of clients. In that posture he had no

> reason ever to suspect' (Ibid.) that in doing so he would be, by his own testimony, irrevocably assuring his disbarment under charges not yet made. "This absence of fair notice as to the reach of the grievance procedure and the precise nature of the charges deprive petitioner of procedural due process. Reversed "In Re Ruffalo", above (emphasis added).

Simply put, the California Court in Kelly and in Natali did not discuss and was apparently unaware of the decision by the United States Supreme Court in In Re Ruffalo above. Of course the U.S. Supreme Court's decision is controlling.

In the present case, the State Bar seeks to distinguish

Ruffalo saying it does not apply; however, it does. In Ruffalo, the attorney defended the charges against him by proving that he hired an investigator. In the present case, Jonathan Ainsworth disproved the charges of alleged conversion of the old boat (Phyillaier) by showing a bill of sale for the boat. This bill of sale was then used by the State Bar to formulate a new charge against Jonathan Ainsworth, after testimony had been given i.e., alleged failure to advise the client that he could consult another attorney before transferring the boat (when in fact Phyillaier did consult one. See Transcript vol. V page 143 lines 13-15).

The same thing was done in regard to the Haschemi matter since the charges and findings confuse Haschemi's Iranian companies and petitioner's American corporations. In Ghasemloo, the charges say that petitioner hired Ghasemloo in regard to a lawsuit on behalf of a corporation which was owned by petitioner himself! As charged, it would not be wrong for petitioner to pay someone to assist him with regard to his own corporation.

In both Haschemi and Ghasemloo the charges allege acts regarding corporations which were not even in existence at the times alleged!

Petitioner had repeatedly

Objected to the entire proceedings(See Transcript Vol. I, pp.3,6,8,9,105; Vol. III, P.61; Vol V, p.131; Vol VI pp. 46,55), and did not waive his objections. If leave to amend the charges to conform to the findings had been given, still the State Bar failed to amend. The findings which don't conform to the allegations cannot be used to disbar petitioner. Woodward v. State Bar 16 Cal.2d 755.

In Irving v. State Bar, 213 Cal. 81, 85; P.2d 2,3, the court stated:

> "Although the committee examiner at the conclusion of the hearings,

secured leave to amend to conform to proof, no amendments in fact were made, and the findings must rest on the charges filed."

(Emphasis added.)

This hardly comports with the due process requirement that petitioner be notified in a meaningful time and in a meaningful manner of the charges against him. Fuentes v. Shavein, 92 S.Ct. 1983, 407 U.S. 67; Boddie v. Connecticut, 91 S. Ct. 780, 401 U.S. 371.

Never has the State Bar amended the above charges other than through wishful thinking. Even if it had, the U.S. Supreme

Court has stated that an attorney may not be disbarred when such a procedure is used. In Re Ruffalo, above.

E. THE FINDINGS ARE CONTRADICTED BY THE FACTS AND BY THE LAW.

1. The Haschemi Matter

The Haschemi matter began one week after a five day hospitalization for petitioner. Petitioner lost approximately 40 lbs. of body weight due to uncontrolled bleeding and was heavily medicated with prescription medication. (See Exhibit AAA page 14. See further discussion under Mitigating Factor below.) He was still recovering when in October 1979, Hassan Haschemi retained him to represent him and his Iranian companies' in

a case against Rockwell.

Petitioner continues to vociferously protest the refusal of the hearing referee to consider the effect of prescribed drugs that were used on petitioner in a futile attempt to stop the bleeding. (See Declaration of Leo Tuckman, M.D. attached to application for hearing De Novo.)

On Haschemi's behalf, and on behalf of Haschemi's Iranian companies, petitioner filed a lawsuit on December 20, 1979, entitled Tchacosh Company, Ltd. (an Iranian company) et al. v. Rockwell, et al. in the Central District of the United States District Court. Well after the initial agreement, it was decided

to file a lawsuit against the Government and State of Iran.

The Haschemi and Ghasemloo allegations must be stricken since they allege representation in 1979 of corporations which did not even exist until later in 1980. (See charging allegations.)

Ainsworth founded Petru International corporation in 1980 (see Exhibit 20c) as well as its three subsidiary American companies, Tchocosh, Inc., Siporex, Inc. and Gashtowar, Inc. Petitioner represented Petru of which he was President, General Counsel and owner. In 1980 Haschemi and his Iranian companies conveyed certain properties to petitioner's corporations giving petitioner personal standing in

the claims. The charging allegations repeatedly confuse Ainsworth's American corporations with Haschemi's Iranian companies and charge Ainsworth with improper representation of his corporations, hardly a disbarable offense.

Subsequently, Haschemi discharged petitioner as counsel for himself and for his Iranian companies only, (See substitution of Attorneys, only Haschemi and his Iranian companies names), and hired Stephen Miller to represent him and his Iranian companies only. In 1981, while Jonathan Ainsworth was out of town on a 10 week trial, Miller forwarded a substitution of attorney form to petitioner, mentioning the Iranian

companies and Haschemi only, with a letter requesting the substituition be signed and returned to Miller for filing with the court. Miller knew that Ainsworth was out of town and that he would not see the letter until he returned. Jonathan Ainsworth did not see the letter until 10 weeks later when he returned. (See Exhibit 11). The letter also requested petitioner to send to Miller's office all documents and evidence concerning Haschemi, most of which were already in the Miller firm's possession. (See Declaration of Leon Small, Miller's young associate, Exhibit 14, p.10, 12, 13.)

"On another matter,"

Jonathan Ainsworth requested Miller to send him a certified check for $40,000 for attorney fees on other legal matters and in part for the attorney's retainer, (See Exhibit 9). This was by mailgram and related to Haschemi's international rice transaction, property refinancing, etc. Jonathan Ainsworth never made turning over the files conditional upon payment of the fees (See Exhibits H and GGG). Stephen Miller even admitted this in his testimony (See Transcript of Dec. 3, 1986 p. 102 lines 6,7)[1]

(See footnote 1, page 124.)

Petitioner immediately advised Miller that the documents would be available for inspection and copying as a result of a

conversation with Nicki Brojivick of the State Bar (see Exhibit 11) pursuant to L.A. County Bar ethics Opinion Nos. 330, 362, See also Judges Weil and Brown, Civil Procedure Before Trial Sections 1:101.14. Stephen Miller never came to his office to inspect the files pursuant to Ainsworth's offer. Moreover, Stephen Miller's law firm refused to pay for additional copies which Miller's young associate admitted he had anyway. (See Declaration of Leon Small, Exhibit 14, p. 10, lines 12, 13)$_2$ (See footnote 2, page 125.

In regard to the substitution of attorneys which he was asked to sign, Ainsworth added a clarification to his signature

only, not to anyone else's signature. It did not conflict with or contradict the statement signed by either Haschemi or Miller on the substitution.

Petitioner had added the following clarifying sentence to the substitution form: "I will remain as attorney of record for Petru, Tchacosh Company, Inc., Siporex Company, Inc., and Gastawar Company, Inc.," (See Exhibit 13.) These were corporations owned by Ainsworth, i.e., the American corporations. The substitution had only requested that Miller be substituted for the Iranian companies which were owned by Hassan Haschemi, an Iranian, and

Ainsworth reserved the right to represent his own American corporations. (See Exhibits 7,13,20A,20B).

This clarified that Mr. Ainsworth would continue to represent corporations which he owned and that Miller would represent Haschemi and Haschemi's Iranian companies which is all that Haschemi and Miller asked for in the substitution and which is all they were legally entitled to. (See Exhibits 7, 13, 20a, 20b, 20c.) Miller later testified he did not realize this. (Transcript December 3, 1986, p.90, lines 17-25, pages 91, lines 14-19).

For the next two months, while at all times there was already a stay in the proceedings, which the

U.S. Justice Department had requested, petitioner engaged in litigation against Miller regarding who would represent Ainsworth's American corporations. Haschemi never took any actions that indicated he wanted Miller to represent petitioner's American corporations.

Surprisingly, in July 1981, the court ordered that Miller be substituted for petitioner as counsel for all plaintiffs including, petitioner's American corporations. In the State Bar proceedings, the Referee never found that petitioner did not own Petru. He merely stated it "appears specious." This is not "clear and convincing" language.

(See Decision of Hearing Panel, p.10, lines 27-28.) Indeed, the Referee was not charged with deciding who oned Jonathan Ainsworth's corporation Petru. Petitioner proved he owned it (See Exhibit 20c, Stock Certificate for Petru). The hearing referee had no power to award ownership of Jonathan Ainsworth's American corporation in the State Bar proceedings.

In the court proceedings, the Judge also ordered that petitioner turn over to Miller a copy of his working file. Ainsworth had already offered to do so. (See Exhibit 11, dated June 8, 1987.) Petitioner then deposited his working file with the court (See Exhibit 26). Later, petitioner

was found in contempt even though he obeyed the court's July, 1981 order to turn over files (which Miller's associate previously admitted having. See Exhibit 14, p.10 lines 12,13). The time for this had been extended by the court until September 21, 1981 (See Exhibit 34). This was done even after the court had vacated its O.S.C. re contempt! (See Exhibit 34). Apparently the court reinstated the Order to Show Cause re contempt (see Exhibit 35) but it was never served upon petitioner! On the face it says it was never served on petitioner! It bears a handwritten note above the judge's signature which says "counsel have personally by telephone been advised of this

Order." Exhibit 35 states on its face that it was never served! Perhaps the judge told his clerk to call, but he didn't, another due process violation. All of this occurred at a time when petitioner was relocating from southern California to northern California. Conference calls were employed and there was a gross failure to serve notices of hearings. Petitioner did not see Exhibit 35 until December 15, 1988 while writing this brief, other than a cursory glance at the State Bar proceedings where he complained over and over again that he did not have time to read the exhibits. (Motions for continuances were sternly and

repeatedly refused). Exhibit 35, the new OSC re contempt so petitioner could read the documents which were numerous and over 165 in number after 20 or more pages, shows on its face that it was never served on petitioner who had no knowledge that it would be a contempt hearing. The O.S.C. re contempt had just been vacated! (See Exhibit 34.) Petitioner appealed the contempt charges.

Two weeks later, the court also ordered petitioner to pay $3,136.04 in sanctions. Miller and Haschemi acquiesced to applying this as a set-off to Haschemi's legal bill on the other matters. (See Exhibit LLL.) and so the appeal was dropped. Ainsworth later paid the $3,136.04

to Haschemi and Miller anyway. (See Exhibit EE).

In the Deposit in Court, dated September 4, 1981, exhibit 26, petitioner had stated:

> "Pursuant to Rule 67 of the Federal Rules of Civil Procedure, through its President, General Counsel and Owner, Jonathan Ainsworth will deposit with the Court on September 21, 1981, his working file which was defined by the Court in chambers on August 21, 1981, as the court file, deposition and discovery documents. Since Hassan Haschemi has already been give copies of all depositions and discovery documents, Plaintiff Petru International Corporation hereby deposits copies of all other documents in the court file." (Emphasis added).

Leon Small, Stephen Miller's associate, put in his declaration that he had reviewed pleadings and discovery furnished to him by Haschemi. (See Exhibit 14, p.10, 12, 13), so the request for copies was superfluous. Apparently young Mr. Small, Mr. Miller's associate had not communicated this to Mr. Miller.

Petitioner had already long before given Hassan Haschemi copies of all depositions and discovery documents. The reason for this was for trial preparation. Leon Small, attorney for Hassan Haschemi, even admitted reviewing these documents in his declaration of June 22, 1981, which is part of exhibit 14, lines

12-13, in which he stated, "Prior to March 13, 1981, Mr. Haschemi made available to this office copies of certain depositions and pleadings..." The Miller office had no business making this motion.

the fact that the documents had been already copied and transmitted to Hassan Haschemi was documented by the mailgram of May 3, 1981, (Exhibit 10) to Stephen Miller from San Francisco. It stated at page 2: "As we have discussed, things have been lost in translation, also letters have sat on client's desk for weeks and months for want of translator and due to administrative inefficiency compounded by trauma induced by

political persecution and torture."

All the documents, including the blueprints for the aircraft hanger, were previously copied and supplied to Hassan Haschemi long before Stephen Miller's superfluous motion.

Exhibit 41, a mailgram dated December 18,1981, shows petitioner's willingness, indeed his desire to meet with Stephen Miller in his office, where the files were, to go over documents. Stephen Miller never came to petitioner's office, despite being invited to do so.

After the papers and pleadings were deposited in Court on September 21, 1981 (exhibit

26), the Stephen Miller law firm never again contacted petitioner regarding production of documents. Had he been contacted regarding inspection of files, he would have welcomed such an exchange. Exhibit 41, the mailgram from petitioner to Stephen Miller dated December 18, 1981, proves this.

No one was prejudiced by alleged delay since a stay had been in effect from April 21, 1980 until January 4, 1982 (See exhibit 40, Nos. 56 and 165). The U.S. Justice Department had asked for a stay of all litigation that involved the Government of Iran.

1a. <u>The Haschemi charges should be overruled since the charges do not conform to the findings.</u>

The charging allegations in Count I, Paragraph 1 of the Notice to Show Cause 85-0-24CC allege that Ainsworth committed malfeasance against his own corporations, hardly a disbarable offense. The charges made the same mistake as made by Stephen Miller in his pleadings, i.e., not recognizing the difference between the Iranian companies which were owned by Hassan Haschemi and the American corporations owned by petitioner. Exhibit KKK clearly shows petitioner's relationship to his California corporations. the Notice to Show Cause in Paragraph I incorrectly identifies the lawsuit which was filed on December 20, 1979, as being

brought by petitioner's California corporation, Tchacosh Company, Inc., (petitioner's own company) which did not even exist until April 5, 1980, four months later.

In the remaining paragraphs of the Notice to Show Cause, the State Bar fails to differentiate between petitioner's California corporation and Hassan Haschemi's Iranian Corporation, a fact which clearly indicates the serious mistake and inaccuracies of the charging allegations.

In Paragraph II of the Notice to Show Cause, the State Bar further confused the issue by incorrectly copying down the names of the companies. The first lawsuit, filed December 20, 1979,

involved only "Tchacosh Company, Limited, a company, Hassan Haschemi, and individual, Hassan Haschemi and Tchacosh Company." These names were not copied properly from the State Bar's own exhibit, exhibit 20. This renders the charges meaningless.

On or about April 15, 1981, petitioner's California corporations were added to the Second Amended Complaint, i.e., Petru International Corporation which owned 100% of the stock of Tchacosh Company, Inc., a California corporation, Siporex Company, Inc., a California corporation and Gashtowar Company, Inc., a California corporation. They had been added after the

court had ordered that the complaint be amended. Defendants later questioned this practice, and moved to dismiss, and so a new motion was made to amend to include these entities. In January, 1982, the court denied this motion, thereby removing these plaintiffs from the lawsuit. Thus Miller and Small could not represent petitioner's corporations in the lawsuit. Miller and Small continued to represent Haschemi and the Iranian companies only. They finally amended the complaint to reflect this deliberately omitting petitioner's California corporations! Petitioner decided that since the Judge apparently

did not want petitioner's American corporations in the lawsuit, it would be useless to pursue the case in his forum and so he did not. The main thing was accomplished, Miller and Small were no longer attempting to represent petitioner's California corporations.

Paragraph I and Paragraph II of the 1985 Notice to Show Cause must be stricken, since they are not supported by the evidence, even the State Bar's own evidence. Petitioner could not have filed the action on October 29, 1979, on behalf of Petru and Tchacosh, Inc., since they did not exist at the time and they were petitioner's American corporations, not Haschemi's

Iranian companies.

Paragraph III of the Notice to Show Cause must likewise be stricken because it is not supported by the State Bar's own evidence. Paragraph III states that Hassan Haschemi "employed attorney Stephen Miller to represent all plaintiffs in Tchacosh v. Iran." When asked by the hearing referee, Stephen Miller admitted that the substitution of attorneys did not affect the four California corporations, only the three Iranian corporations and Hassan Haschemi. Exhibits 7 and 13, the Substitution of Attorneys form, prove that the State Bar was wrong and Stephen Miller now admits that

his office was wrong concerning the substitution of attorneys. The substitution affected only the Iranian Companies, Tchacosh Company, Ltd., (an Iranian company), Hassan Haschemi (the individual), Hassan Haschemi dba Tchacosh Company, Ltd., Siporex Company and Gashtowar Company. Not affected by the substitution of attorneys were petitioner's California corporations, Petru International Corporation which owned Siporex Company, Inc. (a California corporation), Gashtowar Company, Inc. (a California corporation). As well as Tchacosh Company, Inc. (a California Corporation). The allegations in Paragraph III of Count 1 of the

1985 Notice to Show Cause are incorrect. They are refuted by the State Bar's own evidence.

Paragraph V of Count 1 of the 1985 Notice to Show Cause must likewise be stricken, since it states allegations which are likewise contradicted by the evidence. Paragraph V alleges that a letter was sent which stated that petitioner would not sign the substitution of attorneys unless Hassan Haschemi forwarded the sum of $40,000. Even Stephen Miller, the State Bar & complaining witness refuted this (See Transcript Dec 3, 1986, p. 102 lines 6-7). Miller testified that there were no converstions that involved this.

Moreover, nowhere in exhibit 9, the State Bar's exhibit, or anywhere else, is there mention of refusal to sign the Substitution of Attorneys unless payment was made. There is no mention of the Substitution of Attorneys whatsoever! The State Bar has chosen to read something into the mailgram which simply is not there. Exhibit 9 attempts to collect legal fees for work performed on Hashemi's international rice transaction, refinancing of his investment property and other legal work and on a retainer which was only partially paid. There is nothing wrong or improper about that. Even Stephen Miller, the

complaining witness, admitted that he did not have knowledge of conversations where legal files were demanded as a condition (See Transcript December 3, 1986, p.85, lines 1-6).

Paragraph VII of the 1985 Notice to Show Cause must likewise be stricken because it is contradicted by the State Bar's own evidence. That paragraph states in pertinent portion "you altered the document so that it purported to be effective as to Haschemi alone, and not as to any of the other named plaintiffs." This is simply untrue. State Bar Exhibit No. 13, the signed version of the Substitution of Attorneys, proves the falseness of the State

Bar's allegations. It shows clearly that the substitution is effective as to Hassan Haschemi and his three Iranian companies. It clearly shows that it was ineffective as to petitioner and petitioner's California corporation, Petru International Corporation, as well as Petru's three/California subsidiary corporations. There was nothing improper. This was exactly as exhibit 7 had shown was Hassan Hachemi's intentions and it was all he was entitled to. The State Bar should read its own exhibit again; it is clearly effective as to Haschemi and his iranian companies, and contradicting the State Bar's erroneous charges.

Paragraph VIII of the 1985 Notice to Show Cause must likewise be stricken since it is not supported by the State Bar's own evidence. It states that "Plaintiff (singular) in Tchacosh v. Iran filed a motion in Tchacosh v. Iran (not differentiating between the lawsuits or which Plaintiffs, singular or plural, American or Iranian) filed a motion to substitute Miller as their (plural) attorney in your place." State Bar exhibit 14 proves that this is incorrect. Nowhere in exhibit 20 is there mention that Petru International Corporation joined in the motion! Indeed, Stephen Miller's young associate, Leon Small, even had

the nerve to alter the caption to exclude Petru International Corporation, petitioner's corporation! Leon Small even altered the captions in the following exhibits to exclude mention of petitioner's California corporation in the lawsuit:

| | |
|---|---|
| Exhibit 7 | Substitution of Attorneys |
| Exhibit 14 | Notice of Motion |
| Exhibit 22 | Correspondence |
| Exhibit 29 | Correspondence |
| Exhibit 33 | Order to Show Cause |
| Exhibit 37 | Plaintiff's Brief |

The State Bar simply has not met its burden of proof with respect to these allegations, which are contradicted by its own evidence.

Paragraph X of Count 1 of the 1985 Notice to Show Cause must likewise be stricken, since it is contradicted by the evidence presented by the State Bar. In Paragraph X, the State Bar asserts in part, "In fact, you had no authority to employ and discharge Petru's attorney and had no authority to appear as attorney on behalf of Petru." This is clearly contradicted by the State Bar's own evidence. State Bar exhibit 20 clearly shows at exhibit "C" thereto that petitioner owned all 1,000 shares of stock of Petru International Corporation. Petitioner personally founded the corporation in 1980!

Paragraph XII of Count 1 of

the 1985 Notice to Show Cause must be stricken, since it is contradicted by the State Bar's own evidence. It states in pertinent part "You took various actions in an attempt to prevent Haschemi from employing Miller to represent the plaintiffs (sic) in Tchacosh v. Iran. Those actions included, but were not limited to:

(A) Appealing the order granting the substitution of attorneys;

(B) Withholding Tchacosh v. Iran files from Miller;

(C) Filing documents against Miller and Haschemi to disqualify Miller to reinstate yourself as attorney for Petru." (Emphasis added)

The State Bar's evidence, exhibit "C" attached to exhibit 20, clearly shows that petitioner was the owner of Petru International Corporation at the relevant time. Exhibit 13 clearly shows that petitioner did not oppose Stephen Miller representing Tchacosh Company, Ltd., Hassan Haschemi, Hassan Haschemi dba Tchacosh Company, Ltd., Siporex company and Gashtowar Company. The State Bar evidence proves Stephen Miller had no legal authority to represent Petru International Corporation at the time in question.

There is absolutely no evidence that Hassan Haschemi ever attempted to or did exercise any authority that may have been

granted to him by means of the Proxy and Power of Attorney or even what authority that document purported to give. Stephen Miller testified that he did not prepare the Proxy and Power of Attorney and Hassan Haschemi, who the State Bar did not even attempt to call as a witness, against petitioner's continued strenuous objection, has not testified against petitioner nor even indicated any belief that petitioner committed any wrongdoing! Indeed the former client is not even the complaining witness. This of course denied petitioner the right to confront the witnesses against him in violation of his constitutional right to do so, Art. 6 of the U.S.

Constitution. Stephen Miller had lost Hassan Haschemi's case and sought to blame petitioner for the loss rather than to take responsibility himself. He even blamed Judge Takasugi. Again this was trial by surmissal. The State Bar surmissed what Hassan Haschemi would have said had he testified and Ainsworth was found guilty based on surmissal.

The allegations of impropriety contained in paragraph XIX of the 1985 Notice to Show Cause are false because petitioner proved he owned Petru International Corporation (See Exhibits KKK and 20C).

The Haschemi allegations should be stricken.

2. The Ghasemloo Matter

The matter ocurred approximately one week after a five day hospitalization for ulcerative colitis (See Exhibit AAA, Page 14) during which time petitioner lost approximately 40 lbs. of body weight due to uncontrolled bleeding. Petitioner continues to protest the refusal of the hearing referee to consider the effect of prescribed drugs that were used on petitioner in a futile attempt to stop the bleeding (See Declaration of Leo Tuckman, M.D. attached to application for Hearing De Novo). Petitioner was still recovering when these events took place.

In connection with the Tchacosh

case, above, petitioner entered into an agreement with Faird Afshar Ghasmloo, whereby Ghasemloo was to assist in trial preparation. Petitioner agree to hire Ghasemloo as a paralegal and pay him one half of the proceeds. The hearing panel found that this was a fee splitting arrangement which allegedly violated rule 3-102 and Section 6103; however, the charging allegations improperly dealt with a corporation entitled Tchacosh Company, Inc., a company owned by Petru International Corporation, which was owned by Jonathan Ainsworth. Therefore, the State Bar alleges that Ainsworth hired Ghasemloo to help him in the lawsuit on behalf of

his own corporation, and thus the charges are meaningless since as such the proceeds would not be a legal fee but rather money owed to Jonathan Ainsworth and his corporations personally. The State Bar never amended this and the charges should be dismissed. In Re Ruffalo, above.

Petitioner now acknowledges that he did not know at the time that it was improper to pay a paralegal based upon a percentage of the recovery for work performed. He should have agreed to pay his paralegal on an hourly basis; however, this is not what petitioner was charged with.

It is also submitted that the matter is not the type that merits

disbarment since certain conduct not "malum in se"...could not be the basis for disbarring an attorney." In Re Ruffalo (see concurring opinion of Justice White with whom Justice Marshall concurred. In Re Ruffalo concerned the hiring of a paralegal "investigator". Justice Byron White said that the circumstances under which the investigator was hired was not the type of which all would agree to be evil and therefore the attorney should not be disbarred.[3](fn.3p129)

3. The Wetherford Matter

At the outset, it was noted the Lyle Wetherford had agreed in writing to withdraw his claim (see Exhibit B) but that the State Bar

proceeded anyway. This was with the knowledge consent and advice of the hearing examiner (See Transcript vol. I, page 125). Any rule that allegedly allows this violates petitioner's right to due process notice, since petitioner had reasonable notice that the complaint was withdrawn and was "lulled into a false sense of security" that he would not have to defend against these changes (See In Re Ruffalo (at footnote 4) above.)

In October 1983, petitioner filed on behalf of his clients, including Mr. and Mrs Wetherford and all others similarly situated, a class action against all 58 California counties in the federal

district court, entitled Patricia Salizar v. Board of Supervisors of San Francisco County (Salizar). In that suit, plaintiffs alleged that the practice of charging parents for room and board in juvenile halls where their children were detained was unconstitutional for various reasons. Among the alleged reasons, petitioner mistakenly, though not deliberately, alleged that this practice had been declared unconstitutional by the California Supreme Court in In Re Jerald C. in 1982 and 1983.[4] (See footnote 4, page 132.) The court had done so in 1982, but then granted a rehearing in March of 1983. There was no evidence of

malice or intent to deceive on the part of petitioner and there were several other allegations of reasons why the counties' practices were wrong, among them equal protection and due process violations. Petitioner's mistakes were due to mistake, inadvertence and excusable neglect and admittedly incomplete and faulty research on the part of petitioner, but did not intend to deceive the court. Petitioner was admittedly mistaken. Courts have allowed this type of mistake to be corrected by amending pleading or to correct a mistake of law such as this.

In November and December 1983, the Santa Clara and San

Diego County Counsel's offices wrote letters to petitioner that rehearing in Jerald C. had been granted. Petitioner failed to realize the import of the communication from the County Counsels' offices, since he had been inundated with responses from 58 counties throughout the state, had not anticipated the volume of work involved and had not hired adequate staff to help him cope with the deluge of correspondence, motions and paper work. Petitioner said he had been told by a clerk at the California state Supreme court that a new opinion in Jerald C. had been written and was about to be published upholding the Court's original decision. Perhaps the clerk

confused this with a "memorandum opinion." (See Exhibit DDD which describes a Memorandum Opinion. Petitioner moved to introduce DDD but it was refused.) Petitioner did not immediately inform the district court that a rehearing had been granted in Jerald C. Petitioner was admittedly mistaken.[5] (See footnote 5, page 132.)

Nowhere has it ever been alleged that the learned federal court was misled by Jonathan Ainsworth's mistake of law and it was not misled. A mistake of law of this type should not be grounds for disbarment. (Petitioner was also erroneously told by the Santa Clara County Counsel's office that

the deputy who had argued the case had "won" and Jerald C. had been reversed. This was incorrect, of course.)

In November 1983, the district court dismissed the complaint in Salizar, and gave petitioner 30 days to file an amended complaint. At the request of Mrs. Salizar, petitioner did not file and amended complaint; he filed a new complaint instead. This was done because Mrs. Salizar had asked petitioner to withdraw her name from the lawsuit because of newspaper publicity and coverage and because of hounding by reporters. The court then dismissed the Salizar action without prejudice. Other

plaintiffs wished to go forward and Jonathan Ainsworth refiled the lawsuit at their request. (Transcript, Vol. VI, p. 92, lines 3-14.)

As a result, In January 1984, petitioner filed the new lawsuit Ramirez et al. v. Alameda on behalf of many plaintiffs, among them Mr. and Mrs. Wetherford, as well as others, (another action in the federal district court against several california counties. Exhibit 50.) In Ramirez, petitioner again through mistake, inadvertence, surprise and excusable neglect, represented to the court that the charging practice referred to above had been declared unconstitutional by

the California Supreme Court in Jerald C. Petitioner had yet to correct his mistake of law, though he also alleged properly that there were independent grounds for relief i.e., equal protection and due process violations. Jonathan Ainsworth acknowledges that he was mistaken in his understanding of the then existing status of the Jerald C. case, but did not intend to cause any deception. When finally published, Jerald C. was a Jonathan Ainsworth had represented.

On April 6, 1984, the federal district court granted petitioner's request to dismiss, without prejudice, Ramirez, in order to incorporate some of the

points raised by adversary counsel into the complaint, which was to be refiled. As of that date, the California Supreme Court had not filed a new decision in the Jerald C. matter. On April 20, 1984, 16 days later, the California Court filed its decision, holding that parents were not required to reimburse the county for the minor's custodial care and support while the minor was in the custody of juvenile hall (Jerald C., supra, 36 Cal.3d 1, 10), in accordance with the Court's earlier decision and as originally represented by petitioner.

Petitioner then filed a second amended class action in the federal district court entitled

Bouzek et al. v. County of Santa Clara in October, 1984. Bouzek was dismissed without prejudice by the court in February 1985 since the federal court announced that it wished to avail itself of the doctrine of "judicial abstention" deferring to the state courts. The federal court stated that the decision was "without prejudice" and that the case could be refiled in the state courts. (Transcript Vol. VI, P. 128, 129).

In June 1984, petitioner notified by mail all his clients in Bouzek of the court's decision, and inquired whether they wanted to refile the case in state court. (None of these plaintiffs asked him to refile in the State Court.)

The hearing referee found that "the evidence is not clear and convincing that the Wetherfords did not receive a copy of the letter of June 1, 1985." (Decision of Hearing Panel, p. 15, line 14.) Mr. Wetherford said that when the Wetherfords attempted to contact petitioner, they found his former telephone disconnected and were unable to reach him at his former office address. Mr. Wetherford also testified that he did not consult correspondence for the new address, and he had been sent copies of the complaints (See Transcript Vol. I, p. 108, lines 6-16.) The one man hearing panel found that there was no evidence

that petitioner failed to notify the Wetherfords that he had moved, since correspondence contained the new address. There was no evidence of attempts by the Wetherfords to contact Jonathan Ainsworth by mail.

After considering the foregoing, the one man hearing panel concluded petitioner violated his oath and duties as an attorney by failing to notify the Wetherfords of a change in his office address and telephone number, despite the referre's statement regarding lack of evidence in this regard (Section 6103); committed acts with intent to mislead the Wetherfords and the court by misrepresenting the

status of Jerald C., (although no judicial officer was ever misled by the mistake, there was no evidence of deliberately misleading, there were other constitutional grounds alleged and the eventual decision was exactly as Jonathan Ainsworth had represented); and sought to deceive the court with a false statement of law (rule 7-107, Section 6068, subd. (d)). (In a spirit of compromise petitioner had refunded Mr. Wetherford the $500 they had paid and he had agreed to dismiss. See Exhibit B the State Bar counselled him to take the money and proceed against Ainsworth anyway. Transcript Vol.I, p. 125.)

The facts do not support the findings. The mistakes of law are of the type for which California courts traditionally have granted relief due to mistake, inadvertence, surprise or excusable neglect. CCP Section 473. No one was mislead and no harm was done. Additionally, since the complaining witness, Wetherford, agreed in writing to dismiss his complaint, petitioner's due process rights were violated by the proceeding (In Re Ruffalo), above, since petitioner had notice that the complaint was withdrawn. (See Exhibit B)

It is incredulous that a mistake of law that resulted

because a rehearing was granted be interpreted by the hearing referee as a deliberate attempt to mislead a court.

4. THE ARCHULETTA MATTER

At the outset, we noted that Rebecca Archuletta had withdrawn her complaint (Exhibit FFF), but that the State Bar proceeded anyway. This violated petitioner's right to due process since he had notice that the complaint was withdrawn and this "lulled him into a false sense of security" that the complaint was withdrawn. In Re Ruffalo, above.

In June 1983, after 5 year old Jacob Archuletta was injured by his mother who slammed a safe door on his little finger and

broke it, his parents employed petitioner to represent Jacob in a personal injury claim against the mother's insurance company.

the parents subsequently agreed to a $10,000 settlement with their own insurance carrier, American States Insurance Co. (ASIC). ASIC had earlier paid $3,488.51 to Jacob's mother and father for doctor bills before petitioner was hired. This was not the minor's money but rather the parents'. (See Exhibit 59.) After the matter was settled, the mother advanced petitioner $3,000 of the parents' payment from the parents' funds, but not out of their son's proceeds. (The checks had been made payable to the

parents since they were an insured). the hearing referee apparently felt that this was inappropriate, but did not realize that payment from the parents' funds did not require prior court approval.

A petition to approve the compromise of a minor's claim was mistakenly filed in the Municipal court, then refiled in Superior Court. This is not the kind of mistake that merits disbarment. (The amount was within the Municipal Court's jurisdiction, but a special statute provided jurisdiction in Superior Court. The matter was simply refiled.)

Eventually, ASIC's attorneys filed an amended petition due to

the fact that Rebecca's husband's brother had fathered the child, and the allegations regarding paternity had to be corrected. (The parents' embarrassment regarding the paternity of the minor had caused them to omit mentioning of it previously.) The petition also stated that $3,000 was a reasonable attorney's fee (30%). This is all that was required by the Code. The court again approved the $10,000 settlement and ordered petitioner to refund $500 of the previously collected fee, making the fee 25%. The court had previously allowed 30%, in its discretion, and had not followed its local guidelines which were not mandatory. Nothing

regarding fees was omitted in the petitions, though the hearing referee apparently though there were deliberate omissions about having already collected the fee. On the contrary, there was nothing improper in having been advanced the fee by the mother, since it was from her funds not the minor's and the statute regarding minor's compromise did not apply to the parents' money, only to the minor's.

Rebecca Archuletta refused to testify against petitioner at the State Bar hearing. The State Bar interpreted this as her being "totally uncooperative." (See Opposition to Hearing De Novo, p.4, lines 8-9.) Rather than

that, she did not wish to pursue a claim against petitioner. (See Exhibit G) Of course petitioner could not confront her as a witness nor cross-examine her. This violated his right to be confronted with the witnesses against him, in violation of his Sixth Amendment Constitutional right to do so.

5. ALLEGED PRACTICING LAW WHILE SUSPENDED FOR LATE PAYMENT OF DUES

From July to August 1980, July to August 1981, and June to October 1983, petitioner was temporarily suspended from the practice of law in California state courts for paying his State Bar dues late. Suspension does not follow automatically in

federal court. Green V. Elbert, 63 Fed.Rptr. 308. In Re Ruffalo, above, at 547, 1224. While he was temporarily suspended in state courts in 1981, petitioner filed an action in the federal district court against his former client, Haschemi, for breach of contract. This was not improper since Jonathan Ainsworth was not suspended in the federal court.[6] (See footnote 6, on page 135.) In any case Jonathan Ainsworth was in propria persona and represented himself.

The conclusions of the hearing referee in this regard are contradicted by the law, since anyone may represent himself in

court and petitioner was still admitted to federal court in any event.

6. ALLEGEDLY TENDERING CHECKS WITH INSUFFICIENT FUNDS

On three separate occasions during 1983 and 1984, petitioner mistakenly tendered checks with insufficient funds to the State Bar, to Mrs. Archuletta, and to the federal district court. These involved mistakes and were hardly with intent to defraud any of these entities. It is implausible to think an attorney would try to cheat the State Bar and the federal court where he practiced. The one man hearing panel found violation of petitioner's oath and duties as an attorney; however, it

is urged this type of mistake is not sufficient to warrant a judgement of disbarment.

7. THE KAREN MAYES ULRICKSEN MATTER

According to the State Bar's hearing examiner, Karen Mayes signed a statement in which she agreed to dismiss the complaint against petitioner after she had testified. (See Exhibit FF.) The hearing examiner reported that she had signed it even though she had testified.

This entire matter occurred while petitioner was suffering another extremely bad bout of ulcerative colitis. (See Exhibits III and JJJ.) These events transpired at a time when

petitioner lost 25 lbs. of body weight due to uncontrolled bleeding. Petitioner continues to vociferously protest the refusal of the hearing referee to consider the effect of prescribed drugs that were used on petitioner in a futile attempt to stop the bleeding (See Declaration of Leo Tuckman, M.D. attached to application for Hearing De Novo.)

On one occasion the loss of blood was so severe Jonathan Ainsworth had to cancel an appointment with Karen Mayes. On another occasion after meeting with Karen Mayes and her new attorneys, Hawkins and Donahue, to withdraw from the case and to turn over the files (See Exhibits

108C1, C2, DDc1, C2 regarding withdrawal), Jonathan Ainsworth had to go immediately to his doctor because of uncontrolled bleeding.

In 1981 and again in 1982, James Mayes and Karen Mayes hired petitioner for several legal matters. At the Mayes' request, rather than pay cash for legal services, Karen Mayes signed the registration on her Lincoln Continental automobile (which they had been trying to sell but had been unable to sell) to petitioner who was to assume the balance of the loan against the car and apply the equity toward payment of his attorneys' fees. Shortly thereafter James Mayes died, and

Karen Mayes requested petitioner to pursue a wrongful death claim relating to James' death, and to handle the probate of his estate as well as to continue the representation in the other legal matters for which he had been retained earlier.

In May 1982, the time mentioned in Dr. Gerber's report (Exhibit III), concerning petitioner's uncontrolled bleeding, after having represented both James and Karen Mayes, petitioner sent Karen Mayes a letter, stating that he was withdrawing as her counsel because she wanted to alter certain records to be used at trial in numerous cases, would not answer

interrogatories nor provide discovery (See Exhibits 108C1, C2, DDC1, & C2) and because James' alleged holographic will which she had given petitioner to probate was not in James' handwriting. It was in Karen Mayes' handwriting! (See Exhibits KK and LL and compare to signatures on Exhibit MM. The "will" left everything to Karen Mayes.)

Opinion No. 362 of the State Bar Association states at page 3 "An attorney should withdraw if a client insists on false evidence being presented at the trial (See Exhibit HHH.)

Petitioner first attempted to withdraw in attempt to prevent future wrongful conduct by Karen

Mayes. The subject of mandatory withdrawal is discussed in Professional Responsibility in a Nutshell 1980, West Publishing Company, Aronson and Weinstein, at p. 169:

"Some jurisdictions, pursuant to DR 2-110 (b) (2), supra, require withdrawal when a client has perjured himself and refuses to permit disclosure (see Chapter 10 (confidences)). In those jurisdictions the general rule is that the attorney is bound by the attorney-client privilege and thus may not disclse the nature of the client's conduct; but, the attorney is also bound by DR 8-1029a) (4) not to use perjured testimony and therefore is

required to withdraw from further representation. The American Bar Association had adopted this approach. See A.B.A.Op. 1314; A.B.A.Op; 1318. See also In Re A. (Ore 1976) (withdrawal mandatory when client refuses to permit disclosure of fraud perpetrated on tribunal)." (Emphasis added.)

Karen Mayes subsequently employed other counsel to probate the forged will. (See Exhibits 81 and 82). In 1983, after checking the probate fil and seeing that the forged will had actually been probated, petitioner filed a "Petitioner to Void Will and a Petitioner for Allowance of Attorneys Fees or Allowance of Extraordinary Expense." James

Mayes had been petitioner's client and petitioner thought it necessary to inform the court that the forged will was not written by James Mayes, but by Karen Mayes, and that it left everything to her. Petitioner claimed $1,900 in attorney fees for work performed Karen Mayes' behalf (which he had not previously billed, having believed at the time that she was a bereaved widow).

The will was an obvious forgery and the Probate Judge referred the matter to the Districkt Attorney (See Exhibit DD). Petitioner also said that Karen Mayes had said she was going to conceal assets of the estate from the court and stated his

belief (on information and belief) that she and her live-in boyfriend have murdered James Mayes, petitioner's client. Mrs. Mayes had admitted to giving her husband, who she was in the process of divorcing, overdoses of valum (See Transcript Vol. III, p.54, lines 21-25). She also had admitted to having her former live-in/paramedic boyfriend take James Mayes to the hospital where he was found dead on arrival. Former Deputy District Attorney Ken Alm attempted to testify that he believed Ainsworth was sincere in his beliefs and that he thought Ainsworth had probable cause to state his "information and belief" in this regard.[7] (See footnote 7,

on page 137.)

In September 1982, at the request of Judge Spellberg (See Exhibit DD), petitioner caused the matter to be taken off calendar since the judge referred it to the District Attorney's office for criminal investigation. The U.S. Supreme Court as well as the common law going back to Queen's Bench opinions all say that any attorney may reveal client confidences concerning ongoing crimes and frauds on courts. The leading cases are forged will cases such as this one.[8] (See footnote 8, on page .)

In May 1984 in an action filed to recover possession of petitioner's 1978 Lincoln

Continental, petitioner obtained a judgment against Karen Mayes after her answer was stricken because of numerous refusals to obey court orders and refusals to provide discovery. (This was a persistent quirk of Karen Mayes in all her cases. See Exhibit 108c1 and c2, DDc1 and c2 which list reasons for withdrawing from representing her). The judgement was in the amount of $15,000 and decreed petitioner's ownership of the old car. (See Exhibit 87).

Exhibit VV is a copy of a court order which earlier Karen Mayes ignored. It ordered here to immediately return Jonathan Ainsworth's 1978 Lincoln Continental automobile. Exhibits

87 and WW show the judgment which also ordered her to return the automobile. She still refused and the Sheriff's office and police were brought in to execute the judgement. This is why she testified that the police were told of her crimes.

Later, in an attempt to collect the $15,000, petitioner in June 1984 filed a suit in Alameda County entitled Ainsworth v. Billich, in which he sought to set aside a fraudulent transfer of real estate from Karen Mayes Ulricksen (by now she had married her live in paramedic boyfriend) to her parents (the B.'s) which transfer took place after judgment in the earlier case in an attempt

to avoid the affects of the judgement. The new lawsuit alleged concealment of assets to avoid the valid judgment. In connection with this lawsuit, petitioner filed a declaration in which he repeated the allegations which had been stated above. Petitioner urges that Karen Mayes had also waived confidentiality by her own testifying incorrectly as to the communications. He also mentioned the facts regarding Karen Mayes' stealing the car and the judgement against her and in his favor.

Eventually, Karen Mayes' new counsel (her first one also withdrew because she would not obey court orders nor provide

discovery) was successful in setting aside the default judgment in the first lawsuit because he promised the judge that he would see to it that Karen Mayes would produce documents as previously ordered. Her answer was reinstated. The American Bar Association [9] as well as other jurisdictions[10] are filled with authority which support the actions that were taken by petitioner. (See footnotes 9 and 10 on pages 149 and153.)

8. THE PHYILLAIER MATTER

These events transpired at a time when petitioner lost 25 lbs of bodyweight due to uncontrolled bleeding (See Exhibits III and JJJ). Petitioner continues to

vociferously protest the refusal of the hearing referee to consider the effect of prescribed drugs that were used on petitioner in a futile attempt to stop the bleeding. (See Declaration of Leo Tuckman, M.D. attached to application for Hearing De Novo.)

At the outset, we noted that Phyillaier had agreed in writing to withdraw his claim (See Exhibit CC), but that the State Bar proceeded anyway. This violated petitioner's right to due process sufficient to reverse the finding of the one judge hearing panel since it "lulled him into a false sense of security" that the matter had been withdrawn, In Re Ruffalo, above.

In February 1982, petitioner represented Phyillaier in a case against Phyillaier's business partner, Mandella, concerning the right of the parties to a Union Oil service station business and partnership assets. At the time the suit was filed, Phyillaier and Mandella were also co-owners of an old 1973 Seacamper boat, which they had been unable to sell and which was registered in both their names using the alternative "or". In March 1982, Phyillaier and Mandella stipulated to a judgment settling their respective rights to the service station assets. As part of the settlement, the Seacamper boat was to be transferred to Phyillaier. During

negotiations both parties had said they did not want the Seacamper boat and that they had been unable to sell it. Phyillaier said he would give it to petitioner. (See Bill of Sale, Exhibit L.) This was later included in Ainsworth's written retainer agreement. (See Exhibit H.)

The following events transpired at the approximate time Dr. Gerber began treating Jonathan Ainsworth for uncontrolled bleeding due to his ulcerative colitis (See Exhibit III and JJJ).

In April 1982, after Mandella refused to comply with the terms of the settlement regarding the service station, and also failed to transfer the Seacamper boat to

Phyillaier, and after several discussions, Phyillaier signed a retainer agreement at Phyillaier's request, changing the terms of petitioner's representation from an hourly fee basis to one on a contingent fee basis at 40% of all sums recovered. This involved a second lawsuit by Phyillaier against Mandella and Union Oil. At that time, Phyillaier executed the bill of sale to the Seacamper, transferring the boat to petitioner pursuant to the retainer agreement. The hearing referee found that there was no conversion of the boat (See Transcript Vol. IX, page 120, lines 22-24). Even the State Bar now concedes that "he (petitioner)

prevailed on the issue of whether or not Mr. Phyillaier consented to the transfer of the boat (1986 cause Count Two)." See Examiner's Opposition to Hearing De Novo, p. 6, lines 3-4 (first parenthesis added).

Petitioner prepared both the bill of sale and the retainer agreement at Phyillaier's request. Before signing these documents, Phyillaier mentioned that he had consulted another attorney. Because of this petitioner did not inform Phyillaier that he could see another attorney, even though ownership of the Seacamper had been mentioned in the Stipulated Judgment. (It was the Service Station's assets that wee the

subject of the dispute.) The reason for this was that Mr. Phyillaier had told petitioner that he had already consulted with independent counsel!. (Transcript, Vol. V, p. 143, lines 13-15). Neither Phyillaier nor the State Bar challenged or refuted this.

Petitioner may not be disbarred because he was not charged in the original complaint with failing to advise his client (Phyillaier) that he had a right "to seek the advice of independent counsel (Rule 5-101)" This charge was attempted to be added (though no amendment was actually made) after testimony was heard and the conversation allegation disproved.

The Natali and Kelly 1988 California Supreme Court cases seem to allow this sort of procedure; however, the California State Supreme Court must yield to the U.S. Supreme Court by virtue of its decision in Ruffalo, above.

Additionally, in the words of Justice White in Ruffalo, petitioner should not be disbarred for this type of act because it is not "malum in se" i.e. alleged failure to advise (And he didn't violate the rule anyway!)

In August 1982, petitioner transferred title of the Seacamper to a third party for valuable consideration. ($3,800 plus some manual labor-moving of furniture.) Petitioner then filed with the Department of Motor Vehicles an

application for transfer of ownership and, in so doing, signed a standard DMW form at the insistence of a DMV employee in Sacramento. It was mistakenly worded that he had lost the certificate of ownership covering the boat after receiving it form Phyillaier. (See Exhibits 94-1 and 94-2). Petitioner didn't have the certificate of ownership, he had a valid bill of sale instead. No one was harmed because Jonathan Ainsworth had valid legal title (as both the hearing referee and the examiner have reported) and he agreed to hold harmless the DMV. The form should have said that Phyillaier had lost the certificate and so gave him a bill of sale instead because Phyillaier

and Mandella (the previous owners) had apparently lost it. Of course either Phyillaier "or" Mandella had legal capacity to transfer the title since title was vested in Mandella "or" Phyillaier. The hearing referee found that the bill of sale to petitioner to be valid, disproving Phyillaier's allegations. (Transcript Vol. IX, p. 120, lines 22-24) and no one was harmed.

Even so, Ainsworth refunded to Phyillaier the sales price of the old boat in a spirit of good will, despite the fact that petitioner had performed the legal service that had been expressed in the legal documents by which the boat was validly and properly transferred to him.

The lack of credibility of the witnesses against Ainsworth is discussed in footnote 11, page 158.)

F . Denial of Right to Cross Examine Witnesses

Petitioner was denied his constitutional right to cross examine witnesses. Rebecca Archuletta refused to testify against petitioner. So did Hassan Haschemi. Neither appeared. Petitioner was not allowed to confront these witnesses against him.

In one case, the referee observed that "with one of the State Bar witnesses (petitioner) not only showed animosity but outright rudeness, hostility and accused him of mental derangement." This related to

Phyillaier who the referee found had not proved his case but which finding was left out of the highly selective decision. (See Transcript Vol. IX,p. 120, lines 22-24.0 In fact, Phyillaier had been discharged from his job at the Alameda County Sheriff's Department for mental reasons and was incompetent to testify. This was cross-examination by petitioner concerning Phyillaier's mental competency and ability to testify. The referee would not allow this basic right to cross-examine witnesses. This is a fundamental right. The hearing referee cites as an "aggravating factor" that petitioner wished to cross-examine a witness concerning his mental capacity to testify.

(See Transcript Vol. I, pp. 181-184.)

Further evidence of Phyillaier's instability and lack of mental capacity to testify that would have been brought out had the Hearing Referee allowed it would have included the following:

Phyillaier later hired another attorney who in turn with Phyillaier's knowledge and consent rehired petitioner! Phyillaier had previously (before this case) attempted suicide and often wept uncontrollably at odd times. Cross-examination regarding mental stability and competency was not allowed at all. This cast a shadow on the entire proceedings.

It should also be noted the referee ruled against Phyillaier

regarding his conversion allegations (see Transcript Vol. IX, p.120, lines 22-24), casting further doubts on Phyillaier's lack of credibility and lack of mental competence. Even the hearing examiner concedes that Michael Phyillaier did not prove his unfounded allegations. (See Examiner's Opposition to Hearing De Novo p.6, lines 3-4)

The entire proceeding violated petitioner's constitutional rights to due process which he was entitled to in a State Bar proceeding. In Re Ruffalo, above. The referee showed outright hostility in regard to denying petitioner due process throughout the entire proceedings.[12] (See Footnote 12, on page 164.)

G. Mitigating Factors

The following factors mitigate against discipline: (i) after petitioner was served with the notices to show cause, and well prior to the hearings, he refunded money to several of his former clients, who agreed in writing to dismiss their complaint, $500 to the Wetherfords, $2,000 to Karen Mayes, (the amount of equity in the old car), and $3,800 to Phyillaier, (the sales price of the old boat). These charges should have been dropped immediately since these witnesses agreed in writing to drop them. He also paid $3,236 to Haschemi and Miller; (ii) during the State Bar hearings, petitioner wrote or

sent mailgram apologies to Miller for the delay in sending money and to the Wetherfords for failing to keep them better informed of the status of their case. (This was done because they had seemed offended); (iii) between 1979 and 1984, petitioner repeatedly suffered from ulcerative colitis and was hospitalized for five days in 1979 due to uncontrolled bleeding he had lost 40 lbs. of body weight, shortly before the Ghasemloo and Haschemi matters, (See Exhibit AAA, page 14) and had caused him to lose 25 lbs. of body weight during the Mayes and Phyillaier matters. (See Exhibits III and JJJ.) Petitioner continues to protest that the referee would not allow additional

medical testimony as to the severe effect upon him of the prescribed medication. (See application for Hearing De Novo, March 30, 1987 which showed additional medical evidence that petitioner suffered debilitating effects from the medicine he took to control his illness); (iv) petitioner had for the last year and one half been assisted in his practice by a personal injury attorney in good standing; (v) four character witnesses testified at the hearing to petitioner's honesty, veracity, trustworthiness, and conscientiousness; and (vi) petitioner had no prior record of discipline. Petitioner was also forced by the State Bar to undergo the hearing following exploratory

surgery for cancer, while in dire pain because he needed hernia surgery, without an attorney, and with little sleep, averaging only two hours per night. Petitioner even fell asleep once during the hearings because of sheer exhaustion. Despite the knowledge of the compensated referee that petitioner was semiconscious during the hearing and was forced to guess regarding testimony and cases which he hadn't been involved with or even seen in as much as seven years and hadn't had a chance to review the numerous Exhibit he had just been given, continuances were sternly refused. Transcript Vol.I, pp. 3,6,8,9,105; Vol.III, p.61; Vol.V, p.131; Vol. VI, pp. 45,55.

H. Petitioner's Rights to Counsel

The first notice to show cause in this matter was filed in February 1985. Petitioner voluntarily accepted service by mail, upon condition that counsel be appointed.[13] See footnote 13, on page 168). The State Bar Court accepted the condition and ordered that counsel be appointed. This was never done. The State Bar Court later reneged on the agreement and took the attorney away. Both General Denials contained this sentence: "This document is filed upon condition that counsel be appointed and constitutes a special appearance for that purpose." The State Bar introduced no evidence that it ever attempted to comply with the

Court's order and it didn't.

In regard to reviewing the application regarding appointed counsel which was granted, petitioner requested the State Bar Court consider his net income, not his gross income which the State Bar now urges this court do ex post facto. Obviously, gross income did not include operating expenses, office expenses, medical bills, etc. It is the "bottom line" that is relevant, not what one grosses in his law practice. Even so, the form shows $1,500 take home pay which is $18,000 per year gross, not the $42,000 gross figure that the State Bar now enormously calculates. The State Bar Court found that he should have appointed counsel.

In February 1986, the second notice to show cause in the second matter was filed. In June, the examiner and the appointed referee received mailed copies of petitioner's general denial of the allegations and his application for appointment of counsel. Again, petitioner accepted service "upon condition that counsel be appointed and constitutes a special appearance for that purpose." None was appointed. Petitioner's statement of need was based on the identical financial data file as his 1985 request for appointment of counsel, since his financial position had not changed.

The State Bar failed to find a court appointed attorney for petitioner$_{14}$ to represent him in the proceedings concerning the 1985 notice to show cause despite the State Bar Court's order (See footnote 14, on page 169). The State Bar argued that petitioner was attempting to delay the proceedings when in fact it was the State Baritled to a court appointed attorney. Once the State Bar Court ordered Ainsworth be appointed an attorney, it became the State Bar's responsibility to find him one. There is no evidence it did anything whatsoever in this regard. As such, petitioner's rights were prejudiced. The

proceedings should have been stayed until the State Bar complied with the court order and found petitioner an appointed counsel. All notices that were not sent to the court appointed counsel were invalid. The entire proceedings were invalid because of this. The order appointing counsel should be reinstated and the State Bar ordered to pay petitioner's attorneys fees and costs within 20 days of the filing of a cost bill by petitioner.

I. Denial of Motion for Continuance.

In November 1986, approximately two weeks before the disciplinary hearing was to begin petitioner sent a mailgram to the

State Bar requesting a sixty-day continuance to recover from surgery. Evidence of exploratory surgery for cancer, (see Exhibit AAA), was contained in numerous motions and at the hearing. Petitioner suffered extreme pain at the hearing since he also needed hernia surgery, yet he was not allowed a continuance (see Transcript Vol. IX, page 13, line 22 as well as medical records.) Still the hearing referee sternly refused the numerous requests for a continuance.

Also stated in the motion for a continuance was that it was needed and to give the State Bar Court time to reconsider his motions for appointment of counsel

as well as other motions including a motion to dismiss the proceedings. The referee denied petitioner's several continuance requests. Petitioner continued at the hearing in excruciating pain and in need of hernia surgery despite his repeated requests for a continuance. At one point, petitioner actually fell asleep at the hearing table due to physical exhaustion. He told the referee he was averaging only two hours of sleep per night, still his requests for a continuance were sternly denied. Petitioner claims that the denial of his motion for a continuance amounted to an abuse of discretion and a denial of due process. Fundamental fairness

required a continuance after surgery of this type and with petitioner half asleep. (State Bar Court Rules of Practice, former rule F.3, now rule 1131(d) continuance granted on affirmative showing of good cause). Also petitioner made an assertion that his request for continuance was based on his lack of opportunity to examine the documentary exhibits.

Obviously, the most important thing petitioner would have discovered had he been given a continuance was the existence of Exhibit 35, the O.S.C. re contempt which states on its face that it was not served on him. Obviously he could not have seen the

document if it had not been served. Petitioner stated that he failed to appear at the December 1986 prehearing conference which would have afforded him a one day opportunity to review the numerous exhibits because he waited at the referee's office in San Francisco since he had been told the prehearing conference would be there. The referee saw him at his office. A continuance would not have been unreasonable under the circumstances.

J. Client Security Fund Matters

At the conclusion of the December 1986 disciplinary hearing, the referee ordered the Phyillaier and Mandella Client Security Fund (Section 6140.5,

hereafter CSF) matters relating to the ownership of the Seacamper boat and the Phyillaier-Mandella business partnership off calendar without prejudice. This violated the rules since evidence had already been taken. Two of the applicants to the CFS (the Mandellas) were available and on call at the disciplinary hearing, but the hearing examiner did not wish to present their testimony at that time. The testimony of their business partner (Phyillaier) was taken, then the matter arbitrarily severed. The referee said he believed more time was needed to determine whether there were any "reimbursable losses" under the application (6140.5.), even though

the Phyillaier complaint continued. Petitioner asserts he was denied due process because the referee should have dismissed the CSF matters with prejudice at the end of the hearing since evidence was received. The referee's action was an improper exercise of his discretion under the current rules.

K. CONCLUSION

Petitioner requested a new hearing before three impartial referees, with an attorney present, and not immediately following exploratory surgery for cancer. His attorney said at some time in the past that his conduct might justify some imposition of discipline. Petitioner's previous

attorney wished to point out that taking the Professional Responsibility Exam, which the State Bar did not require when Jonathan Ainsworth was admitted to practice in 1974, might have helped before this. It should be noted that Ainsworth has been studying for the bar exam in another state for approximately one year and he has not been practicing in California for that time period. Suspension is therefore inappropriate. Disbarment is inappropriate in view of the repeated violations of petitioner's constitutional rights, as well as the contradictions between the findings and the charges, the

findings and the facts and the findings and the law. The procedures violated petitioner's constitutional right to confront witnesses, to cross examine witnesses, to be represented by an attorney and his right to procedural due process, among other violations.

The burden of showing insufficiency of the evidence falls on petitione, and he has met his burden. Petitioner has never been disciplined in the past and his medical condition as well as the severe affect of prescribed medication, and other factors, mitigate against discipline.

The hearing panel did not consider properly petitioner's

physical disability (uncontrolled bleeding due to ulcerative colitis) nor the effect of prescribed drugs, which the referee completely refused to hear. Petitioner's physical and medical condition at the time the incidents occurred also mitigate against discipline. He should have been allowed to introduce evidence concerning the affect prescribed medication had upon him. The hearing referee committed reversible error by not considering such evidence.

Evidence has shown that petitioner when faced with evidence of mistakes, even if it was on the part of clients, voluntarily made refunds to the clients, apologized for mistakes

and sought to rectify any harmful consequences.

The order of disbarment should be reversed and the State Bar of California ordered to pay Jonathan Ainsworth's attorney's fees and costs within 20 days of his filing a memorandum of costs and attorney's fees since his court ordered appointed attorney was taken away from him without due process of law. The findings and procedures that were followed cannot pass constitutional muster.

Respectfully submitted December 30, 1988

Jonathan Ainsworth

Jonathan Ainsworth

Petitioner

## FOOTNOTES

1 Even the hearing referee admitted that the documents were only "subject to possible interpretation" in regard to whether funds were demanded before the documents would be turned over and the complaining witness, Stephen Miller, stated he did not have knowledge of conversations where the legal fees were demanded before the documents could be turned over. (Transcript December 3, 1968, p. 84, lines 24-25, p. 85, lines 1-6.) In other words, there was no "clear and convincing evidence" that such a thing was intended. Stephen Miller even admitted "there had been no refusal on Mr. Ainsworth's part to turn over the files and records that we were

seeking" (Transcript of December 3, 1968, p. 102, lines 6-7).

2. Even if the claim for money owed had related to the lawsuit files (and it did not--it related to other legal matters and a legal retainer for which Haschemi had not paid), it would have been appropriate at common law and in most jurisdictions to hold the files to secure payment (which was not a condition in the present case):

"ATTORNEYS' LIENS"

"In most jurisdictions, a lawyer may enforce payment of legal fees by use of a retaining or charging lien.

"Retaining liens have been recognized at common law and resemble in

operation mechanics' liens which permit a person to retain property which he has worked on until he has been paid for such work. Thus, the attorneys' retaining lien is possessory and passive. It attaches to all papers, funds, or property of the client which come into the attorney's hands through their professional relationship. It does not, however, apply to documents, funds or property which the attorney holds as a trustee, for safekeeping, or as security for an indebtedness other than the payment of legal fees."

"The retaining lien may be used to secure the payment of all legal fees due whether or not the unpaid fee relates to the matter in which the attorney acquired possession of the property. In other words, if more than one legal

matter was handled by an attorney for the same client, the attorney may retain properties received in connection with any of such matters until the legal fees owing from his services in all of them have been paid. If the attorney files papers with the court or otherwise gives up possession of the client's property, the lien on such papers or property is lost. An attorney may also voluntarily abandon the lien...

"When a lawyer is discharged and the client employees a successor attorney, if the first lawyer's fees remain unpaid,he need not turn over the client's papers to the new attorney unless their retention would not merely inconvenience the client but cause substantial injustice to him. In such cases, the original lawyer may retain

other property or funds sufficient to secure payment of his legal fees or require the client to substitute other security for their payment. On the other hand, if a lawyer withdraws from representation of a client without cause, the retaining lien may be lost." Professional Responsibility in a Nutshell, West Publishing Company, Aronson and Weinstein. At pp 250, 251 (Emphasis added.)

Justice Byron White has said, Thurgood Marshall concurring, that an attorney may not be disbarred when "responsible attorneys" differ and it was responsible attorneys who formulated the above rules. (In Re Ruffalo, ibid) (In the present case, there was no prejudice to Haschemi since a stay order was in effect at all times complained

of. Petitioner should not be disbarred even if he were asserting a lien (which he was not). He offered to make copies and permit inspection and even said the matter of attorney fees owed was "on another matter."

3. In a similar case that also involved a paralegal "investigator," Justice White wrote a concurring opinion, with which Justice Marshall concurred, stating that certain conduct not malum in se, and not generally recognized by all attorneys as improper, could not be the basis for disbarring an attorney. Applying Justice White's standard, Jonathan Ainsworth should not be disbarred because the conduct is of the same type, i.e. alleged improper use of a paralegal.

"Even when a disbarment standard is as unspecific as the one before us, members of the bar can be assumed to know that certain kinds of conduct, generally condemned by responsible men, will be grounds for disbarment. This class of conduct certainly includes the criminal offenses traditionally known as malum in se. It also includes conduct which all responsible attorneys would recognize as improper for a member of a profession."

"The conduct for which the Court of Appeals disbarred petitioner cannot, however, be so characterized. Some responsible attorneys, like the judge who refused to order petitioner disbarred from practice in the Northern District of Ohio, 249 F. Supp. 432 (1965), would undoubtedly find no

impropriety at all in hiring a railroad worker, a man with the knowledge and experience to select relevant information and appraise relevant facts, to 'moonlight'--work on his own time-collecting data. On the other hand some, like the officials of the Mahoning County and Ohio State Bar Association, would believe that encouraging a man to do work arguably at odds with his chief employer's interest is unethical. The appraisal of petitioner's conduct is one about which reasonable men differ, not one immediately apparent to any scrupulous citizen who confronts the question. I would hold that a federal court may not deprive an attorney of the opportunity to practice his profession on the basis of determination after the fact that conduct is unethical if

responsible attorneys would differ in appraising the propriety of that conduct. I express no opinion about whether the Court of Appeals, as part of a code of specific rules for the members of its bar, could proscribe the conduct for which petitioner was disbarred." In Re Ruffalo, 390 U.S. 544, 555-56, 88 S.Ct. 1222, 1228-29. (Emphasis added.)

4. In Re Jerald C. was finally decided by the California Supreme Court in 1984 (36 Cal. 3d 1).

5. MISTAKE, INADVERTENCE, SURPRISE, EXCUSABLE NEGLECT

In keeping with Justice White's admonition that an attorney may not be disbarred for conduct "if responsible attorneys would differ in appraising the propriety of that conduct." (In Re Ruffalo, above, Justice Thurgood

Marshall concurring.) The following citations involve decisions by California courts in which conduct similar to the charges levied against Jonathan Ainsworth were seen by the courts as "mistake, inadvertence, surprise or excusable neglect," and the attorneys were not penalized, pursuant to the Code of Civil Procedure Section 473.

Attorneys have been excused from mistakes made during the course of severe medical illnesses. Merchant's Ad Sign Co. v. Los Angeles Bill Posting Company, (1900) 128 C. 619, 61 P. 277; Salisberry v. Julian (1929) 98 CA 638, 277 P. 516, relief from default due to serious injury to attorney; Transit Ads, Inc. v. Tanner Motor Livery, Ltd. (1969) 270 CA 275, 75 Cal. Rptr. 848 rules of

procedure not complied with due to illness of attorney; smith v. Baunilwski (1952) 115 CA 2d 1245, 251 P. 2d 697; McCreadie vs. Angues (1967) 248 Ca 2d 39, 56 Cal. Rptr. 188 failure to appear at trial due to illness of attorney".

Courts have allowed counsel to amend pleadings (as in the present case) pursuant to Code of Civil Procedure Section 473 on ground of mistake, inadvertence, surprise or excusable neglect. Weingarten v. Block (1980) 1103 CA 3d 129, 162 Cal. Rptr. 701.

The improper citing of the decision in Jerald C. was a mistake of law which could have been amended under the above authority. Other cases which have allowed an attorney to correct a mistake of law include Douglas v. Todd (1892) 96 CL. 655, 31 P. 623; Mitchell v.

California & Oregon Coast S.S. Co. (1923) 192 C. 467, 221 P.204; California National Bank v. El Dorado Lime & Minerals Company (1927) 200 C. 452, 253 P. 704; Lewith v. Rehmke (1933) 217 C. 563, 30 P. 2d 687 (all Supreme Court cases). It is submitted that failure to cite the most recent holding in a case is not sufficient to warrant disbarment of petitioner.

Additionally, the hearing referee improperly cut off petitioner while he was attempting to testify. (See Transcript Vol. IX, P. 18, line 1).

6. The temporary suspension for delay in paying the State Bar dues did not affect petitioner's right to practice in federal court since even disbarment by a state bar does not affect the attorney's right to practice law in federal court.

"The proceeding in the state court did not purport to interfere, and did not interfere, with the right of the plaintiff to practice law in the courts of the United States..." Green v. Elbert, 63 Fed. Rptr 308 and 309, see discussion in 14 ALR2nd 1102. The court in Ruffalo, above, distinguished between disbarment in state courts and in federal courts. The two are not synonymous and one does not result automatically from the other. See also In Re Ruffalo, above at 547, 1224.

It should be noted that petitioner's financial problems which led to problems with paying dues on time were due in large part to his medical problems. In addition to physical disability, there were many doctor bills to pay.

7. In regard to the Mayes allegations the motives of Jonathan Ainsworth were deemed irrelevant.

Kenton Alm, former Assistant District Attorney for the County of Contra Costa, attempted to testify several times that he believed Jonathan Ainsworth was sincere in regard to his belief that Karen Mayes killed her husband (alleged on information and belief). Time and time again, he was not allowed to give the testimony. Petitioner wished to establish probably cause but he was not allowed to.

Question by Jonathan Ainsworth:

"Q. And what did I tell you?

Answer (by Kenton Alm):

"A. You told me generally that you had represented a client and as a result of that representation of the client

that you had come to believe that the client had, one forged a will, and, two, you had suspicions that the client may have been involved in foul play in regard to the death of her husband.

"Q. What was my attitude at the time we met?

MR. FISHKIN: Objection, Your Honor. Irrelevance.

MR. BRIDGETT: Sustained."

(Testimony of former Assistant District Attorney, Kenton Alm, Transcript of Hearing, Vol. IV, p.110, lines 1-10. (Emphasis added.) At p. 115:

Do you think this is a reasonable story to report to the District Attorney's office?

MR. FISHKIN: Objection, Your Honor. The witness has indicated that it wasn't his job to handle these sort of investigations and therefore his opinion would be irrelevant to this proceedings.

MR. BRIDGETT: Sustained.

THE WITNESS: Could I indicate, Your Honor, I was prior to this occasion both misdemeanor filing deputy and for a year

I filed all the felonies and was a filing deputy so I was familiar with the procedure. I just wasn't doing at this time. (Emphasis added.)

MR. FISHKIN: Move to strike. No question pending.

MR. AINSWORTH: Were you qualified, Mr. Alm, to make a determination as to the reasonableness of these allegations? A. Well I don't know how I can answer whether I was qualified. I'd been in the D.A.'s office at the time about eight or nine years. I'd handled murder cases. I'd handled many number of forgeries. I had worked on the misdemeanor complaint desk. I'd also done all the felony filings for the east end of the office for over a year. So I was qualified as any person who has dealt eight or ten years in an area of

law to analyze, you know, a criminal complaint." (Testimony of former Assistant District Attorney, Kenton Alm, Transcription Vol. IV, p. 115, lines 1-15; p. 115, lines 1-9.) At p. 116.

"Q. Did this seem to be an unusual report to you?

MR. FISHKIN: Objection.

MR. BRIDGETT: Sustained": (Testimony of former Assistant District Attorney, Kenton Alm, Transcript Vol. IV, p. 1116, lines 22-24.) At p. 118:

"Q. Did you formulate any impressions in regard to this case?

MR. FISHKIN: Objection. Your Honor, we have a witness who's testified that as an accommodation to a classmate he took some notes of a conversation and took them over to the investigator in charge, and his impression, his

opinions, evaluation, would not be relevant to this proceeding, especially because there is no indication that there was--on the part of this witness anyhow--any accumulation of facts or evidence.

MR. BRIDGETT: The objection will be sustained.

MR. AINSWORTH: Well, You Honor, I'll make an offer of proof that Mr. Fishkin has-he's formulated such impression with regard to my intention by filing an action against me, and it goes to the essence of what I'm charged with, the impression that Mr. Fishkin has formulated with regard to the actions that he believes I have committed is of an inappropriate nature.

Now I don't see what the difference is. This is how these things begin.

MR. BRIDGETT: The objection will be sustained as to the impressions of this witness." (Testimony of former Assistant District Attorney, Kenton Alm, Transcript Vol. IV, p. 118, lines 9-25; p. 119, lines 1-5. Emphasis added.) At p. 122:

By Kenton Alm:

"There's volumes and volumes of tandards inregard to the investigation of a case and what amount of probably cause or what degree of certainty is necessary for charging, for writing search warrants, for making arrests, for making detention. There are different levels of certainty that are required at every stage of the proceeding.

So the answer to the question is yes, definitely there are many stages of he criminal proceedings, including the

initial stages, where in my judgment it is fully appropriate to initiate an investigation based on what appears to be bona fide information and belief, and only through the investigation will you determine whether, one the information is bona fide, and two, whether or not if it even appears to be bona fide, the matter can be proved, and frequently those are two different--you come up with two different results. (Emphasis added.)

MR. AINSWORTH:

Q. What are the district attorney's office guidelines what respect to information or belief of a complaining witness with respect to investigation of an allegation of murder?

MR. FISHKIN: I object, Your Honor. There's no question in this case but

that the matter was complained of by Mr. Ainsworth and that the judge sent the letter that's in evidence, and going into the criteria that might be used in the district attorney's office for evaluating that complaint is irrelevant to any issues that are before the Court.

MR. AINSWORTH: Your Honor, it goes to the issue or probable cause.

Probably cause, Your Honor, in criminal law, if a policeman makes--anytime he makes an arrest, he had probably cause, and if the defendant is not subsequently convicted, it becomes a paramount issue as to the policeman's culpability for making the arrest, whether it was reasonable for him to make the arrest, whether it was reasonable for him to make the allegations. I think what's essential

to this case is, under the circumstances, was it reasonable to report this information to the authorities.

MR. BRIDGETT: Mr. Ainsworth, you're not being charged here with that as a violation of the rules of the State Bar, are you? Are you charging that?

MR. FISHKIN: No. We are charging in the context of the evidence that has been adduced to date, that in the course of the attorney-client relationship, he developed the belief from client information that his client had in the past committed a crime and that he went ahead and disclosed it to everybody and their grandmother, and that is the essence of the ethical offense here. (Emphasis added).

MR. AINSWORTH: Well, Your Honor--

MR. FISHKIN: And he did so to secure an advantage in civil litigation against the ex-client.

Now whatever the district attorney's office might have done, whatever evidence they might have developed, it might or might not be relevant to this case, but certainly this witness is not a percipient witness. He took a report from this classmate, turned it over to the investigating deputy and knows nothing about what happened afterwards.

MR. AINSWORTH: The attorney-client privilege does not apply to criminal acts. It's very plain in the law that it doesn't and in fact an attorney could be charged with being an accessory after the fact, or even before the fact, depending upon when he came upon the

knowledge. It's clear in the law that an attorney has an ethical responsibility, and not only that, a legal obligation to report the existence of a crime if it becomes known to him, regardless of any alleged attorney-client privilege. It's found that knowledge is more important to bring out to the appropriate authorities than it is to preserve the attorney-client privilege with respect to criminal acts.

MR. FISHKIN: Your Honor, we probably need--I'm sorry.

MR. BRIDGETT: We're off the beat here now. We're pursuing whether the witness should answer questions as to the standards for conducting an investigation in a murder and based on information furnished.

MR. AINSWORTH: The intake standards.

MR. BRIDGETT: And I don't see that its relevant to this matter that is before us.

I'll sustain the objection. (Testimony of former Assistant District Attorney, Kenton Alm, Transcript Vol. IV, p. 122, lines 8-12-25; p. 124; p. 125, lines 1-13.)

Obviously, the motives of Jonathan Ainsworth were relevant to the issues of probable cause and to the issue of mitigation. The State Bar referee committed error.

9. ABA CODE

The American Bar Association has promulgated a code of professional responsibility. There, as well as in various instances, the common law

supports Jonathan Ainsworth's actions. These learned authorities illustrate what Justice white of the United States Supreme Court said (Justice Marshalls) concurring in this concurring opinion) concerning what other "responsible attorneys" have said:

"I would hold that a federal court may not deprive an attorney of the opportunity to practice his profession on the basis of a determination after the fact that conduct is unethical <u>if responsible attorneys would differ in appraising the propriety of the conduct."</u> (<u>In Re Ruffalo</u>, above, Emphasis added.)

In regard to the present case, the A.B.A. code allows the acts which Jonathan Ainsworth performed. The A.B.A. Model Code provides:

"DR4-101(c) A lawyer may reveal...(4) confidences or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct."

The evidence has shown that the statements made by Mr. Ainsworth against Karen Mayes were originally made in declaration form to refute improper allegations she had made about him. They were later made in a separate proceeding to set aside fraudulent transfers made by Mayes in an effort to avoid the effects of a judgment against her in which Jonathan Ainsworth sought to recover a fee. (Her answer had been stricken and judgment entered because of her repeated failure to provide discovery documents and her willful

refusals to obey court orders. See Exhibits 87, WW, as well as Transcript, Vol. III p. 168, lines 11-20).

The ABA Model Code also provides: "DR4-101 (C) A Lawyer may reveal... (3) the intention of his client to commit a crime and the information necessary to prevent that crime" The evidence was that petitioner sought to prevent the following crime. The probate of the forged will by Karen Mayes in an effort to misappropriate the assets of her late husband, Jim Mayes. (Allegations regarding murder were on information and belief.)

It should be noted that Mr. Ainsworth had also represented the deceased husband, Jim Mayes, who died an untimely death under mysterious circumstances. Mr. Ainsworth had never

been discharged by the deceased, Jim Mayes, and sought to protect his assets for his children, after he died. Mr. Ainsworth's duties to his deceased client, James Mayes, conflicted with what Karen Mayes wanted. Most jurisdictions, as stated above, support Mr. Ainsworth's actions.

10. THE LAW OF OTHER JURISDICTIONS

The State Bar of California opened the discussion to the law of other jurisdictions by citing New York practice in its briefs.

Other jurisdictions have promulgated rules which would allow the acts which petitioner did. Like the ABA rules which also permit petitioner's acts, the Louisiana rules give additional authority to the opinion stated by Justice White and concurred with by

Justice Thurgood Marshall in Ruffalo, above, that an attorney may not be disbarred"... on the basis of a determination after the fact that conduct is unethical if responsible attorneys would differ in appraising the propriety of that conduct."

The following are quotes from "responsible attorneys":

"FUTURE CRIME"

"It is generally recognized rule that the attorney-client privilege is destroyed when the client reveals the intention to commit a crime and the attorney is unable to dissuade him from his plan. The rule is frequently presented in the following language: There is a privilege protecting communications between attorney and client. The privilege takes flight if

the relation is abused. A client who consults an attorney for advice that will serve him in the commission of a fraud will have no help from the law. He must let the truth be told. (Emphasis added.) Clark v. United States (U.S. 1933) 299 USI, 186, 187. DR4-191*C) (93), which provides that a lawyer may reveal '{t}he intention of his client to commit a crime and the information necessary to prevent the crime.' reflects the common law. Se also Ec7-5. An A.B.A. ethical advisory opinion has stated that an attorney must disclose when the facts in this knowledge indicate beyond a reasonable doubt that a crime will be committed. The CPR provides for permissive withdrawal as well when a client personally seeks to pursue an illegal

course of conduct.' DR2-220 (c) (1). Professional Responsibility in a Nutshell 1980, Aronson and Weinstein, West Publishing Co. at 187 Emphasis Added.)

The signature on the forged will (Exhibit KK) was prima facie evidence that a crime had been committed when compared to the notarized signatures of Jim Mayes and Karen Mayes. (See Exhibits LL and MM).)

The Supreme Court of Louisiana likewise permits the actions which petitioner took:

"Rule 1.6 Confidentially of Information

(a) A lawyer shall not reveal information relating to representation of a client unless the client consents after consultation, except for

disclosures that are impliedly authorized in order aid carry out the representation, and except as stated in paragraph (b).

"(b) A layer may reveal such information to the extent the lawyer reasonably believes necessary:

"(1) to prevent the client from committing a criminal act that the lawyer believes is likely to result in imminent death or substantial bodily harm; or

"(2) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, in to response to allegations in any proceeding

concerning the lawyer's representation of the client." Court Rules, Supreme Court of Louisiana, effective January 1, 1987 (Emphasis added).

The State Bar of Louisiana has also adopted the American Bar Model Code which likewise permits petitioner's acts: (DR4-101)

"(C) A layer may reveal:

"(3) The intention of his client to commit a crime and the information necessary to prevent the crime.

"(4) Confidence or secrets necessary to establish or collect his fee or to defend himself or his employees or associates against an accusation of wrongful conduct.

11 LACK OF CREDIBILITY OF WITNESSES: The lack of credibility of the witnesses against Jonathan Ainsworth was crucial,

yet the hearing officer repeatedly refused to allow cross-examination of these matters. (Transcript Vol. I, p. 180, line 19).

The overwhelming evidence was that both Mayes and Phyillaier, who were business associates, perjured themselves at the hearing. Both alleged conversion of chattels which they claimed had been placed in Mr. Ainsworth's possession "in trust"; however, bills of sale were introduced into evidence refuting the unfounded allegations. (Exhibits 78 and L, See Motion to Dismiss of October 15, 1986, and General Denial dated March 10, 1986).

In the case of Mayes (an old car), the hearing examiner finally moved to dismiss the charges against Ainsworth. In Volume III, pp. 176-77, the State Bar

withdrew these allegations despite Mrs. Mayes' perjured complaint that Jonathan Ainsworth had taken the automobile (his automobile):

"MR. FISHKIN: We allege in the Notice to Show Cause that the car had been obtained after the death of James Mayes and had been obtained in trust. I am withdrawing that allegation. Mr. Ainsworth has provided a series of documents and an a series of defenses on that, and I have decided that--I can go into the reasoning if you wish, but I have decided--

"MR. BRIDGETT: I don't care about the reasons.

"MR. FISHKIN: We're not contending the car was obtained illegally.

"MR. BRIDGETT: So far as you're concerned, the State Bar is concerned,

the Lincoln Continental was owned, or became owned, by Mr. Ainsworth after the transfer from Mrs. Mayes, I suppose?

"MR. FISHKIN: Right, Prior to the death of James Mayes.

"MR. BRIDGETT: Prior to his death. All right, and you're not concerned as to whether that was proper or improper or not?

"MR. FISHKIN: No, no.

"MR. BRIDGETT: No contention about that.

"MR. FISHKIN: No contention." (Transcript Vol. III, p. 176, lines 1-11. Emphasis added.) (See Transcript Vol. III, p. 125, lines 19-21).

Mayes even went so far as to attempt to cash a check from Ainsworth <u>after</u> she testified against him. The check was conditional upon resolving any claim

against petitioner. (See Exhibit FF).

In the case of Phyillaier, the hearing examiner even had in his possession documentary evidence from a handwriting expert that Phyillaier's signature on the bill of sale was genuine! Mr. Phyillaier's testimony was contradicted by the State Bar's own Exhibit ZZ (formerly exhibit 99) which is a handwriting analysis of Mr. Phyillaier's signature on the bill of sale. The hearing referee found a valid transfer (See Transcript Vol. IX, p 120, lines 22-24.)

In the case of the Haschemi matter, Mr. Haschemi chose not to testify. As far as we know, Mr. Haschemi has not complained. His new attorney, Miller, who had lost Haschemi's case against

Rockwell (a $15,900,00 claim) sought to blame Jonathan Ainsworth and even the federal judge to cover his own legal malpractice; yet the Ninth Circuit Court of Appeals upheld the Summary Judgement on January 24, 1984 (See Exhibit 40, item 11).

Stephen Miller testified totally by hearsay with regard to the Stock Holding and Legals Services Agreement. There was simply no competent evidence whatsoever regarding Mr. Miller's allegations regarding its contents. Indeed, the alleged document was never produced. Mr. Miller was simply not competent to testify concerning the alleged content of a document which was allegedly singed over one year before he began representing Hassan Haschemi and which was never produced.

There was no evidence whatsoever that Jonathan Ainsworth was not the valid legal owner of Petru International Corporation. Jonathan AInsworth was the valid legal owner of Petru International Corporation! Jonathan Ainsworth made a prima facie showing that he owned Peru and he did. The evidence was not properly refuted.

12 THE REFEREE

a. The record shows that the State Bar used great speed to hire a "compensated referee" to decide the case for the State Bar. On the other hand, there is no evidence that the State Bar made any effort whatsoever to obey the State Bar Court's order to find and hire an attorney to represent Jonathan Ainsworth after the Court ordered it to do so many months earlier.

b. Additionally, the referee refused to allow petitioner to introduce evidence (See Transcript Vol. IX, p. 10, lines 1--17) and even cut off the hearing before the petitioner could finish his case. (See Transcript Vol, IX, p. 118, line 1) Petitioner was denied his right to cross-examine a witness regarding his mental capacity to testify (See Transcript Vol. I, p. 181, lines 181--190). These actions by the referee do not conform to standards of due process referred to by the U.S. Supreme Court in Ruffalo. Haschemi and Archuletta did not testify, violating petitioner's right to confront the witnesses against him.

c. Though the allegation of conversion of an old car (Mayes) was dismissed by the State Bar (See Transcript Vol. III,

p. 176-177) and the allegation of conversion of an old boat (Phyillaier) was found inaccurate by the referee (See Transcript Vol. IX, p. 120, lines 22-24) and even refuted by a handwriting expert used by the State Bar (Exhibit ZZ formerly 99), the referee made no mention of either in his written opinion. In both cases the charges were disproved.

d. The hearing referee denied petitioner even a one day continuance despite the fact that petitioner actually fell asleep at the hearing table due to exhaustion and was semi-conscious throughout the hearing, averaging only two hours of sleep per night.

e. By written statements, Arthur Bridgett, the one man hearing panel showed that he erroneously believed that

the State Bar Court had not issued an order granting petitioner an appointed counsel. Mr. Bridgett, a semi-retired lawyer, erroneously reported: "In respondent's case he failed to qualify for a State Bar appointed attorney because his financial condition did not show he could not afford his own attorney." (Emphasis added.) As the Supreme Court correctly pointed out in its opinion: "The record indicates that petitioner's 1985 motion for appointed counsel was granted over the phone by the State Bar clerk's office in November 1985." For Arthur Bridgett, the referee, to be in error about this basic fact throughout the entire hearing clearly shows he handled Ainsworth's repeated requests for counsel at the hearings with false and erroneous assumptions.

This clearly violated petitioner's right to due process. In Re Ruffalo, above.

13. The record indicates that petitioner's 1985 motion for appointed counsel was granted over the phone by State Bar clerk's office in November 1985. The record, however, does not contain a written order granting petitioner's request for counsel though the State Bar's various motions clearly indicate that State Bar personnel were aware that counsel had been ordered appointed. By his written statements the referee shows that he was completely unaware of his, erroneously believing that State Bar Court had not granted petitioner an attorney. (See Order on Application for Hearing De Novo April 2, 1987, page 3 lines 9-11). Both General Denials contained this sentence: "This

document is filed upon condition that counsel be appointed and constitutes a special appearance for that purpose" Counsel was appointed, then taken away, violating the condition.

14. The State Bar did not introduce evidence that it ever sought to find an attorney for petitioner or b) that it ever served any documents on said attorney. There is no evidence the State Bar did either. This contrasts sharply with the fact that the referee was found almost immediately for the State Bar. He should have been hired to represent petitioner since the order to find an appointed counsel was issued first.

IN THE SUPREME COURT OF
THE STATE OF CALIFORNIA

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| JONATHAN BASS AINSWORTH | ) | |
| Petitioner, | ) | |
| v. | ) | S004517 |
| THE STATE BAR OF CALIFORNIA | ) | |
| Respondent. | ) | |

BY THE COURT:

We review the unanimous recommendation of the Review Department of the State Bar Court that petitioner be disbarred. The review department adopted the findings and conclusions of the hearing panel. We accept these findings as our own and agree disbarment should be imposed. [1]

## I. FINDINGS OF FACT

Petitioner was admitted to practice in 1974. The proceedings below concerned eight specific instances of misconduct between 1979 and 1984.

The disciplinary proceeding consisted of two consolidated cases. In two notices to show cause, filed in February 1985 and January 1986, petitioner was charged with committing numerous serious violations of the Business and Professions Code and the Rules of Professional Conduct, [1/] including: (i) violating his oath and duties as an attorney (6067, 6068, and 6103); (ii) committing acts

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1/ Unless otherwise noted, all section references are to the Business and Professions Code. All references to rules are to the Rules of Professional Conduct.

involving moral turpitude (6106); (iii) appearing without authority as an attorney for a party to an action or proceeding (6104); (iv) violating a court order (6103), and misleading a tribunal (rule 7-105); (v) delaying his client's suit to promote his own gain and prosecuting an appeal solely for the purposes of delay (6103, 6106); (vi) failing to preserve the confidences of his client (6068, subd. (e)); (vii) committing acts of deceit with intent to mislead the court and a party to the action (6068, subd. (d); rule 7-105); (viii) practicing law while suspended (6125); and (ix) entering into a fee splitting arrangement with a nonlawyer (rule 3-102). Petitioner appeared in propria persona at the December 1986

hearing. We set forth the hearing panel's findings in detail as follows.

A. State Bar Case No. 85-0-24

1. The Haschemi Matter

In October 1979, Hassan Haschemi retained petitioner to represent his business interests. On Haschemi's behalf, petitioner filed a lawsuit on December 20, 1979, entitled Tchacosh Company, Ltd., et al. v. Government and State of Iran et al. in the Central District of the United States District Court (hereinafter Tchacosh lawsuit). Among the plaintiffs in this Petru International Corporation (Petru). Subsequently, Haschemi discharged petitioner as his counsel, and hired Miller to replace him. Miller forwarded a substitution of attorney form to petitioner, with a

letter requesting the substitution be signed and returned to Miller for filing with the court. The letter also requested petitioner to send to Miller's office all documents and evidence concerning Haschemi and the Tchacosh lawsuit. Petitioner ignored Miller's request and instead demanded Miller send him a certified check for $40,000 in attorney fees. In June 1981, petitioner mailed to the federal district court an altered version of the substitution form (without proof of service) that had been sent to him by Miller.[2/] Petitioner failed to notify either Miller or the court of the alternation.

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2/ Petitioner had added the following sentence to the substitution form: "I will remain as attorney of record for Petur, Tchacosh Company, Inc., Siporex Company, Inc., and Gastawar Company, Inc."

For the next six months, petitioner engaged in litigation against Miller and Haschemi, claiming he was president and general counsel of Petru, and that he had the right to represent Petru in the Tchacosh lawsuit. In July 1981, the court ordered that Miller be substituted for petitioner as counsel for all plaintiffs in the Tchacosh lawsuit and that petitioner turn over to Miller all relevant materials and case filed pertinent to the pending litigation. In January 1982, petitioner was found guilty of contempt for failing to obey the court's July 1981 order. Two weeks later, the court ordered petitioner to pay plaintiffs $3,136.04 in attorney fees. At the time of the State Bar hearing in 1986, however, petitioner had not paid the attorney fees, nor had he

complied with the court's previous order.

After reviewing the facts surrounding the Haschemi matter, the hearing panel found that petitioner violated his oath and duties as an attorney within the meaning of section 6103 by disobeying the court's July 1981 order, delaying the Haschemi suit with a view to his own gain, prosecuting an appeal solely for purposes of delay and committing acts of deceit with intent to mislead Haschemi. In addition, the hearing panel found petitioner committed acts involving moral turpitude, dishonesty and corruption in violation of section 6106 and failed to preserve the confidences and secrets of Haschemi in violation of section 6068, subdivision (3).

2. The Ghasemloo Matter

In connection with his representation of Haschemi, petitioner entered into an agreement with Farid Afshar Ghasemloo, whereby Ghasemloo was to assist in trial preparation relating to the Tchacosh lawsuit. Pursuant to the foregoing agreement, petitioner agreed to split his attorney fees with Ghasemloo, who was not a licensed attorney. The hearing panel found the fee splitting arrangement violated rule 3-102 and section 6103.

3. The Wetherford Matter

In October 1983, petitioner filed on behalf of his clients (Mr. and Mrs. Wetherford), an action against all 58 California counties in the federal district court, entitled Patricia Salizar v. Board of Supervisors of San

Francisco County (Salizar). In the suit, he asserted that the practice of charging parents for the operating of juvenile hall was unconstitutional. In paragraph four of the complaint, petitioner falsely alleged that charging parents for the operation of juvenile hall had been declared unconstitutional by the California Supreme Court in In re Jerald C. in 1982 and 1983.[3/]

This court filed a decision in Jerald C. in December 1982. Although the court granted a rehearing in March 1982, petitioner failed to inform the Salizar court of this fact.

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3/ In re Jerald C. was decided by this court in 1984 (36 Cal 3d.1).

Moreover, in November and December 1983, the Santa Clara and San Diego County Counsels' offices notified petitioner that the rehearing in Jerald C. had been granted. Petitioner still did not inform the district court that rehearing had been granted in Jerald C.

In November 1983, the district court dismissed the complaint in Salizar, and gave petitioner 30 days to file an amended complaint. When petitioner failed to file an amended complaint, the court dismissed the Salizar action.

In January 1984, petitioner filed, on behalf of Mr. and Mrs. Wetherford, an action in the federal district court against several California counties, entitled Ramirez v. County of Alameda. In Ramirez,

petitioner again falsely represented to the court that the charging practice referred to above had been declared unconstitutional by this court in Jerald C., supra, 36 Cal.3d 1. Petitioner failed to disclose to the court that at the time he filed the Ramirez action, rehearing had been granted by this court, and no new decision in Jerald C. had been filed.

On April 6, 1984, the federal district court granted petitioner's request to dismiss Ramirez. As of that date, we had not filed a decision in the Jerald C. matter. On April 20, 1984, we filed our decision, holding that parents were not required to reimburse the county for the minor's custodial care and support while the minor was in the custody of juvenile hall. (Jerald C.,

supra, 36 Cal.3d 1, 10.)

In October 1984, petitioner filed a second amended class action in the federal district court entitled Bouzek et al. v. County of Santa Clara. Mr. Wetherford, a named plaintiff, received a mailed copy of the complaint. The complaint contained petitioner' office address. Bouzek was decided by the court in February 1985.

In June 1985, petitioner notified by mail all plaintiffs in Bouzek of the court's decision, and inquired whether they wanted to refile the case in state court. When the Wetherfords attempted to contact petitioner, they found his phone disconnected and were unable to reach him at his office address. The hearing panel found that petitioner failed to

notify the Wetherfords that he had moved.

After considering the foregoing, the hearing panel concluded petitioner violated his oath and duties as an attorney by failing to notify the Wetherfords of a change in his office address and telephone number (6103); committed acts with intent to mislead the Wetherfords and the court by misrepresenting the status of Jerald C.: and sought to deceive the court with a false statement of law (rule 7-107, (6068, subd. (d)}).

4. The Archuleta Matter

In June 1983, after five-year old Jacob Archuleta was injured in an automobile accident, his parents employed petitioner to represent Jacob in a personal injury claim against the

automobile driver (defendant). Petitioner subsequently agreed to a $10,000 settlement with the defendant's insurance carrier, American States Insurance Co. (ASIC). At petitioner's request, ASIC paid $3,483.51 to Jacob's mother. She paid petitioner $3,000 of the payment as attorney fees before he filed and received court approval of a petition for the compromise of Jacob's claim. Eventually, ASIC's attorney filed an amended petition on behalf of plaintiffs, informing the court that petitioner had collected $3,000 as an advance on his anticipated attorney fees. The court eventually approved the $10,000 settlement and ordered petitioner to refund $500 of the previously collected fee, which he did. The hearing panel found that petitioner

violated his oath and duties as an attorney (6103), violated rule 2-107 by collecting an illegal fee, and committed an act with intent to deceive the court (6068, subd. (d)).

5. Practicing Law While Suspended

From July to August 1980, July to August 1981, and June to October 1983, petitioner was suspended from the practice of law in California for failure to pay his State Bar dues. While he was suspended in 1981, petitioner filed client, Haschemi, for breach of contract. In addition, while suspended in 1983, petitioner filed the Archuleta complaint in Contra Costa County Municipal Court. The hearing panel concluded that by practicing law while suspended, petitioner violated

section 6103 and 6125.

6. Tendering Checks With Insufficient Funds

On three separate occasions during 1983 and 1984, petitioner tendered checks with insufficient funds to the State Bar, Mrs. Archuleta, and the federal district court, in violation of petitioner's oath and duties as an attorney under section 6103.

B. State Bar Case No. 86-0-0006

1. The Karen U. Matter

In 1982, James M. and Karen M. U. (Karen) (husband and wife) hired petitioner. At petitioner's request, Karen signed the registration on her Lincoln Continental automobile over to petitioner who was to assume the balance of the loan against the car and apply the equity toward payment of his

attorney fees. Shortly thereafter James M. died, and Karen requested petitioner to pursue a wrongful death claim relating to James's death, and to handle the probate of his estate.

In May 1982, petitioner sent Karen a letter, stating that he was withdrawing as her counsel because he believed she wanted to alter certain records to be used at trial. He stated that James's holographic will which she had given petitioner to probate was not in James's handwriting. The letter did not request attorney fees.

Karen subsequently employed other counsel to probate her late husband's will. After the will was probated, the court allowed $4,050 in statutory attorney fees to the new counsel. In 1983, however, petitioner

filed a "Petition to Void Will and a Petition for Allowance of Attorneys Fees or Allowance of Extraordinary Expense." Petitioner claimed $1,900 in attorney fees for work allegedly performed on Karen's behalf. Petitioner charged Karen with forging James's will, concealing assets of the estate from the court, murdering James, and operating an illegal pyramid scheme. In September 1983, petitioner caused the matter to be taken off calendar and has taken no action on the petition since then.

In May 1984 in an action filed to establish ownership of the Lincoln Continental, petitioner obtained a default judgment against Karen in the amount of $15,000 and decreeing petitioner's ownership of the car. In an attempt to collect the $15,000,

petitioner in June 1984 filed a suit in Alameda County entitled Ainsworth v. [B.], in which he sought to set aside a transfer of real estate from Karen to her parents (the B.'s). In connection with this lawsuit, petitioner filed a declaration in which he accused Karen of murdering her husband, stealing his estate, forging his will and stealing petitioner's car. Eventually, Karen's new counsel was successful in setting aside the default judgment.

Based on the foregoing, the hearing panel concluded petitioner wilfully violated his oath and duties as an attorney (6103); failed to maintain such actions, proceedings and defenses as appeared to him legal or just (6068, subd. (c)); failed to abstain from "offensive personality" and advanced

facts prejudicial to the honor or reputation of Karen, although such conduct was not required by the "justice of the cause" {6068, subd. (f)}; encouraged commencement of an action against Karen from a corrupt motive {6068, subd. (g)}; failed to employ, for the purpose of maintaining the causes confided to him, such means only as are consistent with the truth {6068, subd. (d)} and failed to maintain inviolate the confidences and secrets of Karen {6068, subd. (e)}.

2. The Phyillaier Matter

In February 1982, petitioner represented Phyillaier in a case against the Union Oil Company and Phyillaier's business partner, Mandella, concerning the rights of the parties to a Union Oil service station business and partnership

assets, which included a 1973 Seacamper boat. At the time the suit was filed, Phyillaier and Mandella were co-owners of the boat, which was registered in both their names. In March 1982, Phyillaier and Mandella stipulated to a judgment settling their respective rights. As part of the settlement, the Seacamper was to be transferred to Phyillaier.

In April 1982, after Mandella refused to comply with the terms of the settlement, and failed to transfer the Seacamper boat to Phyillaier, Phyillaier signed a retainer agreement at petitioner's request, changing the terms of petitioner's representation from an hourly fee basis to one on a contingent basis at 40 percent of all sums recovered. Soon thereafter,

Phyillaier executed a bill of sale to the Seacamper, transferring the boat to petitioner. Petitioner prepared both the bill of sale and the retainer agreement. He did not, however, inform Phyillaier that because the ownership of the Seacamper remained the subject of dispute, he should consult with independent counsel for advice on whether he should execute the retainer agreement and bill of sale to the boat.

In August 1982, petitioner transferred title of the Seacamper to a third party for valuable consideration. Petitioner then filed with the Department of Motor Vehicles an application for transfer of ownership and, in so doing, reported that he had lost the certificate of ownership covering the boat after receiving it

from Phyillaier. In fact, petitioner never had the certificate of ownership because Phyillaier never received it from Mandella.

The hearing panel determined petitioner violated his oath and duties as an attorney (6103), and violated rule 5-101 by requesting Phyillaier to sign a retainer agreement and bill of sale to the Seacamper without fully disclosing in writing the reasons for the transfer. Thus, the hearing panel concluded, petitioner acquired an adverse interest in Phyillaier's property without advising his client to seek the advice of independent counsel. (Rule 50191.)[4/]

4/ Although the notice to show cause did not specifically allege a violation of rule 5-101, such a violation was implied in the allegation that petitioner transferred title to the Seacamper while it was the subject of litigation involving Phyillaier. (See, e.g., Kelly v. State Bar (1988) 45 Cal.3d 649, 654, fn. 5.) In addition, petitioner failed to object to the additional charge during the course of the disciplinary hearings. Accordingly, we conclude that the failure to mention the violation of rule 5-101 in the notice to show cause did not prejudice petitioner's defense. (See, e.g., Natali v. State Bar (1988) 45 Cal.3d 456, 467.)

C. Mitigating and Aggravating Factors

The hearing panel found the following mitigating factors: (i) after petitioner was served with the notices to show cause, and during the hearings, he refunded money to several of his former clients ($500 to the Wetherfords, $3,236 to Haschemi and Miller, $2000 to Karen, and $3,800 to Phyillaier); (ii) during the State Bar hearings, petitioner wrote or sent mailgram apologies to Miller for the delay in sending money and to the Wetherfords for failing to keep them better informed of the status of their case); (iii) between 1979 and 1984, petitioner suffered from ulcerative colitis and was hospitalized for five days in 1979 (petitioner's illness caused him to lose weight and become irritable; he claims

he suffered debilitating effects from the medicine he took to control his illness); (iv) petitioner recently had been assisted in his practice by a personal injury attorney in good standing; (v) four character witnesses testified at the hearing to petitioner's honesty, veracity, trustworthiness, and conscientiousness; and (vi) petitioner had no prior record of discipline.

In aggravation, the hearing panel found petitioner lacked candor at the hearings, and did not cooperate with the State Bar in the investigation of charges against him. The referee observed that "with one of the State Bar witnesses, [petitioner] not only showed animosity but outright rudeness, hostility and accused him of mental derangement."

Finally, the hearing panel found that although petitioner expressed remorse for his mistakes, he lacked appreciation for the seriousness of his misconduct and the harm he caused his clients. As stated above, after considering all the relevant evidence, the panel recommended petitioner be disbarred, and the review department agreed unanimously.

## II. DISCUSSION

Petitioner raises a number of objection to the State Bar's proceedings. As we explain, we are not convinced by petitioner's claims, and we believe the State Bar recommended the correct discipline under the facts.

### A. Reasonable Right to Counsel

Petitioner makes several assertions regarding his reasonable

right to counsel under section 6065, subdivision (b). Specifically, he claims he was denied his due process right to a fair hearing because he was denied representation by appointed counsel. In this regard, petitioner asserts the State Bar erroneously vacated a 1985 order for appointment of counsel, improperly denied his request for appointed counsel on the 1986 notice to show cause, and erred in failing to notify petitioner of the criteria for determining indigence. Petitioner also contends the State Bar erroneously denied his motion for a continuance. We are not persuaded by petitioner's arguments. As we explain below, our review of the record discloses that petitioner had ample notice and opportunity to prepare for

the hearing and defend against the consolidated complaint, and we discern no likelihood that representation of petitioner by appointed counsel would have influenced, to petitioner's benefit, the findings and disciplinary recommendation of the hearing panel or the review department.

1. Procedures for Obtaining Counsel

The procedure in State Bar matters for obtaining counsel and determining indigence are informal, and not guided by published rules. (Dixon v. State Bar (1981) 39 Cal.3d 335, 342 [no abuse of discretion in review department's failure to appoint counsel when attorney unnecessarily delayed pursuit of counsel and failed to show entitlement].) State Bar proceedings are

generally regarded as quasi-criminal in nature, and a State Bar member is not entitled to traditional criminal procedural safeguards. (Slaten v. State Bar (1988) 46 Cal.3d 48, 57); Frazer v. State Bar (1987) 43 Cal.3d 564, 567; Yokozeki v. State Bar (1974) 11 Cal.3d 436, 447.) Finally, we have recognized that although a State Bar member is entitled to a "reasonable" opportunity and right to be represented by counsel under section 6085, it is the attorney's responsibility to obtain representation. (Slaten, supra, 46 Cal.3d 48, 57; see also Dixon, supra, 39 Cal.3d 335, 341-343.)

As the State Bar observes, the first notice to show cause in this matter was filed in February 1985. From February to May of that year, the State

Bar was apparently unsuccessful in its attempts to serve notice on petitioner. According to the State Bar examiner, attempts to serve petitioner by mail between March and May 1985 were unavailing. The record reveals that petitioner's failure to receive notice was due principally to his own failure to notify the State Bar of his correct and current address, as required by section 6002.1, subdivisions (a) and (b), and Rules of Procedure of the State Bar, rule 201. Petitioner eventually acknowledged personal service of the notice. The notice included an application for appointment of counsel upon a showing of indigency. Petitioner's answer and request for appointed counsel, filed in November, included a financial statement

indicating he was single and earned $42,000 per year. Petitioner listed a personal loan debt of $30,000, but did not reveal to who the debt was owed.[5/]

In January 1986, the State Bar served the second notice to show cause in the second matter.[6/] In June, on the day scheduled for the first mandatory settlement conference, the examiner and the appointed referee received mailed copies of petitioner's general denial of the allegations and his application for appointment of counsel. Petitioner's statement of indigence was based on the identical financial data filed in his 1985 request for appointment of counsel.

On failing to hear from petitioner whether he had found counsel to represent him in the proceedings concerning the 1985 notice to show

cause, and after concluding that petitioner was attempting to delay the proceedings, the State Bar examiner filed

5/ The record indicated that petitioner's 1985 motion for appointed counsel was granted over the phone by the State Bar clerk's office in November 1985. The record, however, does not contain a written order granting petitioner's request for counsel.

6/ Petitioner argues that the 1986 notice was not properly served. Our review of the record, however, indicates otherwise. On January 22, 1986, the notice to petitioner was mailed to three separate addresses, including a Louisiana address appearing in the State Bar's membership records as of December 1985. We find that the State Bar took reasonable and necessary steps to notify petitioner of all disciplinary activity. (Lydon v. State Bar (1988) 45 Cal.3d 1181, 1186; rule 243.)

a motion for hearing on the appointed counsel issue, indicating he would oppose appointment of counsel. In July 1986, after petitioner failed to file opposition to the examiner's motion, the examiner filed (i) a motion to vacate the order for appointed counsel in the 1985 matter, and (ii) opposition to the request for assigned counsel in the 1986 matter. The examiner's motion stated that petitioner had failed to show he was indigent and that a continued quest to seek pro bono counsel (and the resulting delay) not only would make it more difficult for the State Bar to locate witnesses, but also would result in undue hardship on three witnesses (Mr. and Mrs. Mandella and Phyillaier) who had filed Client Security Fund applications in connection with their

complaints against petitioner (see, post, p. _____ [typed opn. pp. 19-20]). The examiner's motion was granted.

The record discloses that petitioner had ample opportunity to prepare for the hearing on appointment of counsel. Moreover, it was reasonable for the State Bar to conclude that based on petitioner's financial statement and yearly income of over $42,000, he was not indigent. Indeed, the State Bar observes that petitioner had hired an attorney to represent him during hearing motions. When the State Bar contacted this attorney the week before petitioner's hearing, he he would be consulting with petitioner during the course of the hearing. Accordingly, even if we were to find the State Bar

erred in denying petition counsel, we perceive no prejudice in the State Bar's action. (Dixon, supra, 39 Cal.3d 335, 341-343.)

Finally, the hearing was held 11 months after the second notice to show cause was served on petitioner. Because petitioner delayed several months in locating counsel, and because he failed to make an adequate showing of indigence, we find the State Bar Court properly vacated the 1985 order for appointed counsel, and correctly denied petitioner's application for such counsel. (Ibid.)

2. Referee's Denial of Motion for Continuance

In November 1986, approximately two weeks before the disciplinary hearing was to begin in the consolidated

cases, petitioner sent a mailgram to the State Bar requesting a sixty-day continuance of the hearing. He asserted he needed the continuance to recover from unspecified surgery, and to give the State Bar Court time to reconsider his motions for appointment of counsel, and other motions (including a motion to dismiss the proceedings). The State Bar referee denied petitioner's continuance request.

Petitioner now claims, without citation of authority, that the denial of his motion for a continuance amounted to an abuse of discretion and a denial of due process. We disagree, and find petitioner has failed to demonstrate the requisite good cause required for a continuance. (State Bar Court Rules of Practice, former rule

F.3, now rule 1131(d) [continuance granted only on affirmative showing of good cause].) In addition, we find untenable his new assertion that his request for continuance was based on his lack of opportunity to examine the documentary exhibits. Petitioner neglects to reveal that he failed to appear at the December 1986 prehearing conference which would have afforded him an opportunity to review the exhibits. (See Bambic v. State Bar (1985) 40 Cal.3d 314, 319 [continuance properly denied after petitioner repeatedly failed to appear at hearings and failed to show good cause].)

B. Client Security Fund Matters

At the conclusion of the December 1986 disciplinary hearing, the referee ordered the Phyillaier Client

Security Fund (6140.5, hereafter CSF) matters (relating to the ownership of the Seacamper boat and the Phillaier-Mandella business partnership) off calendar without prejudice. Two of the applicants to the CSF (the Mandellas) were not present at the disciplinary hearing; the referee believed more time was needed to determine whether there were any "reimbursable losses" under the application. (6140.5) Petitioner now asserts he was denied due process because the referee should have dismissed the CSF matter with prejudice.

We find the referee's action to be a proper exercise of his discretion under the current rules. As we held in Saleeby v. State Bar (1985) 30 Cal.3d 547, 563-566, payments from CSF are made on a discretionary basis, and the

applicant has no entitlement to a specific amount. In order to comport with due process, however, the State Bar must allow an applicant an opportunity to be heard and to respond to the State Bar's proposed disposition of the request for funds. (Ibid.) Finally, although a formal hearing is not required, the State Bar has the option of either utilizing the disciplinary proceedings against the attorney as the forum for determining the amount available to the applicant, or providing a separate procedure for CSF dispositions. (Saleeby, supra, 39 Cal.3d at p. 566.) Accordingly, we find the referee exercised proper discretion in ordering the CSF matter off calendar without prejudice.

C. Evidence Supporting the Findings and Recommendation

Although petitioner admits that "his conduct justifies some imposition of discipline," he also claims that many of the findings and thus the recommendation of disbarment are not supported by evidence in the record. His various attacks on the findings, however, rely heavily on and repeat the evidence he presented to the hearing panel. In short, he asks us to credit his version of the facts over the contrary evidence presented by the State Bar. (Arden v. State Bar (1987) 43 Cal.3d 713, 724-725.)

After reviewing the record, we decline petitioner's invitation. "While the standard of review requires us to consider the evidence independently, we

assign great weight to the findings below when based on conflicting testimony. The members of the hearing panel were in a superior position to evaluate conflicting statements because they could observe the demeanor of the witnesses and the character of their testimony." (Arden, supra, 43 Cal.3d at pp. 724-725.) Moreover, the burden of showing insufficiency of the evidence to sustain the findings falls on petitioner. (Maltaman v. State Bar (1987) 43 Cal.3d 924, 957; Arden, supra, 43 Cal.3d at p. 724.) as we explain below, we conclude petitioner has failed to sustain his burden.

With respect to the Haschemi matter, petitioner claims that he "filed" the altered substitution of attorney and that it was in "absolute

accord with the wording of Mr. Haschemi." The evidence, however, contradicts petitioner's assertion that petitioner informed the court or Attorney Miller that he had written on the document he was continuing in his representation of Petru. Further, as noted above, petitioner failed to serve the document on Miller.

In addition, petitioner's contention that he owned Petru and was therefore allowed to continue his representation of the company is unconvincing. Indeed, petitioner's own testimony refutes his assertion. He state that Haschemi transferred stock from three Iranian corporations to three American corporations, and in turn, the stock in the three American corporations was transferred to Petru. The stock of

Petur was put in petitioner's name, after which he executed an irrevocable power of attorney in favor of Haschemi. Apparently, the only purpose of the stock transfer was to confer jurisdiction of the contemplated litigation on an American court. The retainer agreement did not grant petitioner an ownership interest in Petru, nor did petitioner ever produce the stock holding and legal services agreement mentioned in the power of attorney. In short, our review of the record reveals the Stare Bar's findings in the Haschemi matter were supported by convincing proof. (Arden, supra, 43 Cal.3d 713, 725.)

In the Ghasemloo, Archuleta, and Wetherford matters, petitioner admits that his deceptive actions

violated the Rules of Professional Conduct in each instance, but that he should not be penalized for his actions because he was unaware at the time that he was violating any rule. His assertion, however, is not supported by case law and we find no merit in his claim that ignorance of the Rules of Professional Conduct excuses their violation. (Gassman v. State Bar (1976) 18 Cal.3d 125, 131.)

D. Weight Afforded to Mitigating Factors

Petitioner next contends that the hearing panel did not consider properly his physical disability (ulcerative colitis) as a mitigating factor. He asserts his medical condition at the time the offenses occurred warrants less severe

discipline. We disagree.

In order to determine discipline that is consistent with the purpose of protecting the public from attorneys unfit to practice law (Arden, supra, 43 Cal.3d at p. 726), we must "balance all relevant factors including mitigating circumstances on a case-to-case basis." (Ibid.) Here, petitioner committed numerous wrongful acts in his professional capacity including: intentionally misleading a judicial officer, failing to communicate properly with clients about their cases, breaching fiduciary obligations to clients, and harassing a client for his own gain. Such egregious behavior constitutes serious misconduct warranting disbarment. (Maltaman v. State Bar, supra, 43 Cal.3d 924, 957

[dishonest acts in court are a basic violation of an attorney's oath and duties]; Rosenthal v. State Bar (1987) 43 Cal.3d 612, 615 [nondisclosure of conflict of interest, overcharging clients, failure to return files and harassment of former clients; lack of remorse]; Cooper v. State Bar (1987) 43 Cal.3d 1016, 1028 [failure to deliver property to client, breach of fiduciary

We do not find that petitioner's medical condition militates against disbarment. Although we sympathize with petitioner's ailment, he fails to convince us that the condition rendered him unable consistently to perform his duties as an attorney in conformance with the Rules of Professional Conduct.

In sum, petitioner's

dereliction of his duty to his clients, his intentional misleading of judicial officers and his failure to appreciate the seriousness of his numerous violations of attorney responsibilities, constitute blatant and serious violations of petitioner's oath and duties as an attorney. Thus, we find that disbarment is the appropriate discipline to protect the public, preserve confidence in the profession, and maintain the highest possible professional standards. (Jackson v. State Bar (1979) 23 Cal.3d 509, 514.)

## III. CONCLUSION

We order petitioner Jonathan Bass Ainsworth be disbarred from the practice of law and that his name be stricken from the roll of attorneys. We further order that petitioner comply

with the requirements of rule 955 of the California Rules of court and that he perform the acts specified in subdivisions (a) and (c) of that rule within 30 and 40 days, respectively, after the effective date of this order. Our order is effective on finality of this opinion.

AINSWORTH v. STATE BAR

S004517

COUNSEL FOR PARTIES:

FOR PETITIONER:

Philip W. Bartenetti
Clark & Trevithick
800 Wilshire Blvd., 13th Floor
Los Angeles, CA 90017
(213) 629-5700

FOR RESPONDENT:
Office of General Counsel
State Bar of California
555 Franklin Street
San Francisco, CA 94102
(415) 561-8200

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NO 88-1240

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1988

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JONATHAN B. AINSWORTH

Petitioner

V.

THE STATE BAR OF CALIFORNIA

Respondent.

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# SUPPLEMENTAL BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF CALIFORNIA

JONATHAN AINSWORTH
2237 S. Acadian Thruway
Suite 301
Baton Rouge, LA 70808
Telephone: (504) 923-0311

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Hassan Haschemi was an impostor and had no legal authority to hire anyone to represent Tchacosh, Siporex or Gashtowar in any lawsuit! See decision by the United State Court of Appeals in case no. 794932 RMT, Tchacosh Co., Ltd. v. Rockwell International Corporation 766 F.2d 1333.

The United States Court of Appeals upheld the opinion of the United States District Court in this regard. It held:

> "We hold, therefore, that at the time of divestment, Rockwell held no property or assets of Tchacosh within United States territory, and that the Government of Iran fully executed any acquisition of property or assets owed by Rockwell to Tchacosh arising from their subcontract within its own territory. Under the act of state doctrine, the Iranian decrees

> divesting Haschemi of authority to bring suit on behalf of Tchacosh will be given effect.
>
> Accordingly, the District Court's grant of summary judgment in favor of Rockwell is affirmed." (Id, at 1339 emphasis added)

In other words, Hassan Haschemi was an impostor! If the State Bar of California had any integrity at all, and was not merely concerned about its won-lost record, it would immediately dismiss its charges with regard to Hassan Haschemi and act in accord with the United States Court of Appeals for the Ninth Circuit as well as the U.S. District Court in Los Angeles which granted summary judgment on the grounds that Hassan Haschemi did not have authority to bring the lawsuit in the first place.

If the State Bar were concerned with the truth, and not merely in protecting its won-lost record, it would immediately dismiss the Haschemi counts which took up 40% of the findings.

A grave injustice has been committed! Hassan Haschemi represented to Jonathan Ainsworth that he had authority to bring the lawsuit. He didn't. His own government had stripped him of that power. He misled Jonathan Ainsworth deliberately and without paying him for work performed. It would be a travesty of justice for him to prevail against Jonathan Ainsworth.

Compounding the matter further, Hassan Haschemi's attorney, who handled the above case when the Ninth Circuit wrote its opinion, perjured himself when testifying against Jonathan Ainsworth!

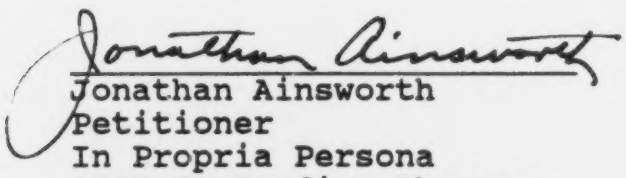
Instead of relating the true facts of the Ninth Circuit's and the district court's opinions, Mr. Miller falsely testified that Jonathan Ainsworth had caused Hassan Haschemi to lose the case. Attorney Miller perjured himself when he erroneously testified regarding the U.S. District Court Judge:

> "Judge Takasugi who is generally a very patient judge, lost his patience in this case and, quite frankly wanted to get rid of the case" (Transcript Vol. II, page 67, lines 17-19).

Since Stephen Miller was the primary witness against Jonathan Ainsworth in the proceedings below, his perjured testimony

had an enormous impact. The entire case should be thrown out. Absent a magnanimous act on the part of the California Bar now that it realizes the truth, the Supreme Court is respectfully requested to summarily reverse the judgment below and order that the State Bar of California pay all of petitioner's attorneys' fees and costs from the outset of the case to its conclusion, within thirty days of the filing of a cost bill by petitioner.

Respectfully submitted March 8, 1989.



Jonathan Ainsworth
Petitioner
In Propria Persona
2237 S. Acadian Thruway
Suite 301
Baton Rouge,
Louisiana 70808
(504) 923-0311